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Region 2 News Clips

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[In Wake Of NYPIRG Report, Calls For EPA To Address Long Island Water Quality](#) (WSHU PUBLIC RADIO; June 10, 2019)

Long Island's members of the U.S. House of Representatives made a bipartisan call for the federal Environmental Protection Agency to help protect water quality at home.

[Schumer targets IJC over Lake Ontario flooding: 'We're gonna go after them'](#) (BUFFALO NEWS; June 10, 2019)

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[Can the BQX streetcar be a viable transit option for Queens' future? Not without some big federal bucks](#) (QUEENS COURIER; June 10, 2019)

As the Brooklyn-Queens Connector crawls closer to reality or bust, there is one snag a source sees in the \$2.7 billion proposal by the de Blasio administration to link the two boroughs by a north-south streetcar route.

[Jersey Shore surfers brave bacteria-filled water for big waves](#) (ASBURY PARK PRESS; June 10, 2019) AP

Most surfers know it's best to avoid surfing near pipes that dump stormwater into the ocean soon after a storm, due to the increased chance of getting sick from bacteria that enter the surf.

[Update – Clean fill operator claims something stinks in Saugerties](#) (MID-HUDSON NEWS; June 10, 2019)

Joseph Karolys is fighting a battle with the Town of Saugerties, which seems on its surface to be about an industrial operation located at 1446 Rt. 212 – a windy stretch of state highway, halfway between the villages of Woodstock and Saugerties. He lives at the site with his wife and two teenage children. The business has operated there for nearly three years.

[Wrestling with Devilish Details of How to Curb Energy Use in NJ](#) (NJ SPOTLIGHT; June 10, 2019)

With a new law establishing tough mandates to reduce energy use, there is widespread agreement New Jersey has the potential to achieve huge benefits and savings for customers but far less consensus on how the state will realize those goals.

[Naturalists Renew Calls to Halt Horseshoe Crab Harvest in Delaware Bay](#) (NJ SPOTLIGHT; June 10, 2019)

Larry Niles has been working to protect migrating shorebirds on New Jersey's Delaware Bay beaches for the last 23 years, and he's still worried that some of them might go extinct.

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[Reuters: Major automakers back compromise on U.S. vehicle emissions rules, urge deal](#)

[The Washington Post: White House poised to relax mileage standards, rebuffing automakers and setting up probable fight with California](#)

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[Energywire: States, greens push court to block methane rule change](#)

[Bloomberg Environment: Oil Refiners Challenge EPA Rule Allowing High-Ethanol Gas Sales](#)

[Bloomberg Environment: Workers Will Die Unless EPA Bans Solvent, Advocates Say](#)

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[Chemical Watch: Expert Focus: US states outpace EPA on PFAS firefighting foam laws](#)

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[POLITICO Pro: Senate Democrats push Chamber to defend climate science](#)

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Region 2 News

HARTFORD COURANT

Connecticut, New York in court battle over dumping in Long Island Sound

By Ana Radelat

June 11, 2019

A fierce court battle between Connecticut and New York over the state's dumping of sediment in the eastern portion of Long Island Sound will come to a head this summer.

Connecticut says the new underwater dump site is needed to maintain the state's economic development effort — including its lucrative submarine construction business at Electric Boat's shipyard — and to keep Submarine Base New London off any future base closure list. The dredging is intended to keep harbors and navigation routes open.

New York says the site will be harmful to its ecology and tourism, and Connecticut could, and should, dump the material it dredges up somewhere else.

The feud between Connecticut and New York began nearly three years ago when the U.S. Environmental Protection Agency and Army Corps of Engineers proposed opening a 1.5-square-mile dump site between the mouth of the Thames River and the southeastern tip of Fishers Island.

Two other sites, in the western and central sound, were slated to close in December of 2016. The EPA decided to keep all three sites open for another 30 years.

New York has no objections to the other dumping sites, but sued in the U.S. District Court for the Eastern District of New York to block disposal of sediment in the Eastern Site.

"EPA's designation of the Eastern Site ... was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," New York says in the lawsuit it filed to block the dumping ground.

The case will come to a head this summer Presiding Judge Edward Korman has given both states June and July deadlines to submit their final filings.

Connecticut says the other two sites in the sound lack the capacity to handle the full volume of dredged material long term and are much farther away. The state says transporting material to those other sites results in more pollution and congestion. But, because of the lawsuit, Connecticut has not been able to dump any dredged material in the Eastern Site.

Connecticut also argues that dumping dredged material in the eastern sound is environmentally safe.

"Connecticut is committed to environmentally responsible management of dredged material," said Department of Energy and Environmental Protection Commissioner Katie Dykes. The DEEP is a defendant in the lawsuit, along with the EPA.

Connecticut Attorney General William Tong is representing DEEP, and says New York's legal challenge "is without merit."

“The record is abundantly clear — the selection of the Eastern Long Island Sound Disposal Site was done properly and lawfully and must proceed,” Tong said. “Thousands of maritime jobs and billions of dollars in revenue depend on the ability to dredge and safely deposit materials.”

The state also argues that the Eastern sound disposal site is needed for security reasons because the U.S. Army Corps of Engineers found that without dredging, the ability to launch and build submarines in Groton “would be eliminated.”

Toxic lobsters?

New York says there is plenty of room in the two other disposal sites to store dredged material. It says the eastern part of the sound is part of a special estuary, a place where ocean saltwater mixes with freshwater from rivers and streams, providing vital nesting and breeding habitat for many species of fish and other marine life.

Lobstering is still done in Long Island Sound, though there are far fewer lobsters than in the past.

“Long Island Sound has been one of the most productive estuaries in the United States,” the New York lawsuit says. “While commercial fishing has significantly declined, the Sound remains a critical marine resource to New York and neighboring states.”

New York also says “disposing dredged materials in an estuary can present a significant risk of environmental harm,” because it is dredged from in and around rivers and harbors near sites of historic or current commercial or industrial operations that often contain toxic substances “injurious to the marine environment and humans.”

The lawsuit says Connecticut deemed the dredged material environmentally safe under the federal Clean Water Act, but not under the more stringent Ocean Dumping Act. It says lobsters and fish could bring toxins into New York waters as they swim across the sound.

New York’s lawsuit also says the EPA “erroneously evaluated the impacts of designating the Eastern Site on existing commercial navigation and inexplicably excluded commercial vessel traffic data showing heavy passenger and automobile ferry traffic passing directly through the designated site.”

In its most recent filing, submitted to the court last week, Connecticut said “there simply is not sufficient available disposal volume in the central and western sites to accommodate the needs from the eastern Long Island Sound.”

The federal court’s decision will have a sizable impact on the state’s economy, Connecticut said.

Citing the Connecticut Port Authority, the state’s lawsuit says “Connecticut’s maritime industry contributes more than \$9 billion to the state’s economy and employs more than 40,000 people.”

“The availability of the Eastern Long Island Sound Disposal site for use by eastern Connecticut maritime interests is essential to support the vitality of our marine economy in an environmentally responsible way,” DEEP’s Dykes said.

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NEWSDAY LONG ISLAND

[Hundreds hear plan to contain Bethpage plume polluting groundwater](#)

By David Schwartz

June 10, 2019

Hundreds packed Bethpage High School to hear an ambitious state plan to contain and treat groundwater pollution from a toxic plume that has affected 11 public water supply wells and threatens another 16 as it moves a foot per day.

"This is a big night in this community. This is the next giant leap forward in a problem some of you have been dealing with for decades," said Martin Brand, deputy commissioner for the Department of Environmental Conservation.

He called the groundwater pollution well, which is now more than four miles long, "a legacy of industrial contamination in this community," referring to the Bethpage manufacturing site once used by the Navy and Northrop Grumman.

The \$585 million state plan would be the first that seeks to contain the spread of the pollution in groundwater, as well as extract and treat the contaminated water.

To do that, it would operate 16 wells on the edges of the plume and 8 wells pumping "hot spot" areas with higher concentrations of contaminants. The water would be treated and recharged into the aquifer including at recharge basins and through irrigation at Bethpage State Park and at the Massapequa Creek.

Many residents came in hopeful about the state's commitment, but wary after years of promises to address the plume, only to see it continuing to spread.

"It's so slow a process. I hope it doesn't become another Love Canal," said Paul Kane, 59, a retired Con Edison worker, referring to the infamous upstate New York pollution site.

Before the formal hearing, he pointed to his house on a map of the plume, highlighted in pink. "This is where I am. I'm in the middle of it," he said.

Lenny Tricarico, 72 of Massapequa, said he's watched the edge of the plume spread, now south of the Southern State Parkway, nearer to where he lives.

"I'm not too happy about it, but it's just a fact," he said, noting that his wife, like many others in the community, drink bottled water, despite assurances by water providers that the water meets all state and federal drinking water standards.

Also at Monday's hearing, state health officials assured residents that their water was safe to drink.

Water providers and local politicians have been pressing the state Department of Environmental Conservation for years to force Northrop Grumman and the U.S. Navy into a more aggressive cleanup plan.

They said in recent years, the state DEC has been more responsive.

Bethpage Water District Commissioner John Coumatos called this "a big day for Bethpage. The start of a new era."

Brand said after the DEC picks a final plan, sometime after the public comment period closes July 7, they'd ask Northrop Grumman and the Navy to implement it.

"If they don't, we'll use all our resources at our disposal — legal, political and social," Brand told the audience.

During the public comment portion, residents expressed fear about cancer and other health effects, as well as timing.

Gina McGovern, a 25-year-resident of Bethpage, said "it sounds like a wonderful plan. My question is about time and money."

She asked "what's the carrot and what the stick?" to get them to the table.

"Grumman stopped loving Bethpage a long time ago," she said.

Brand said good science would bring them to the table, but state law requires them to ask the polluters to pay for the plan before taking further action.

The plume contains 24 contaminants, including TCE, a human carcinogen that is toxic to the immune system and reproduction, according to the Environmental Protection Agency, and the emerging contaminant 1,4-dioxane, a likely carcinogen, according to the EPA, that water providers are struggling to treat.

The state's study found the plume has spread 4.3 miles south toward the Southern State Parkway, was 2.1 miles wide at its widest point and up to 900 feet deep.

The Navy and Grumman set up manufacturing, research and testing facilities on a more than 600-acre plot in Bethpage beginning in the late 1930s. The facility was home to the Apollo moon lander and turned out Hellcat, Tigercat, Albatross and other planes during World War II and the Korean War.

The DEC's plan is expected to take five years to design and implement. It could take 110 years to fully remove the contaminants from groundwater, according to state documents.

Northrop Grumman and the U.S. Navy have said they plan to submit public comments on the DEC proposal.

Brand said the new plan would be on top of existing cleanups that Northrop Grumman are undertaking, including pumping wells and plans to remove contaminated soil.

Stan Carey, superintendent of the Massapequa Water District, which is in the path of the plume, said the district supports the proposal, but it wants to see the plan implemented in three to four years.

"Five years seems a little too long for us given the history," he said. "The fact this has been going on 40 to 50 years ... now we're getting to full plume containment and it'll take five years? It's kind of tough to swallow."

Mike Boufis, superintendent of the Bethpage Water District, said calls from residents since the plan became public has been for an expedited schedule. He said he expects "bits and pieces to be moving forward before the five years is fully developed."

Rich Humann, president of H2M architects + engineers, a longtime consultant for Bethpage Water District, said, "We're putting our faith in the state that they know their plan and know what it takes to get done."

Water providers had been critical of the DEC for years for not forcing a more aggressive cleanup and allowing the plume to spread, but generally praised the DEC's new recommended plan, which it has been developing since 2017.

The plan the state favors was detailed in a report released last month. It calls for wells to be located inside the plume to "aggressively" remove areas with the highest contamination concentrations. A series of wells around the edges would prevent the plume from spreading.

The state DEC can modify the plan or select alternative proposals based on new information or public comments.

Alternative proposals could cost from \$332 million to \$748 million. The DEC said its recommended plan is the "most cost-effective" because it includes extraction of groundwater from the central portion of the plume, combined with hydraulic containment of the entire plume.

DEC officials said they expect Northrop Grumman and the Navy would oppose their plan, given their previous statements that containment of the plume isn't feasible.

Gov. Andrew M. Cuomo and other state officials have said that if the Navy and Grumman balk at the cleanup proposal, the state would proceed with the project and sue them later to recover the costs.

Ann Kenna, a third generation Bethpage resident, said the pollution has been unfairly labeled the "Bethpage plume."

"Bethpage and residents are not responsible," Kenna said. "It's the Navy/Grumman plume."

DEC CLEANUP PLAN HIGHLIGHTS

Cost: \$585 million

- 24 wells around edges of plume and in pollution hot spots.
- Treated water discharged to recharge basins, used for irrigation, put into Massapequa Creek

- Five years to design and implement
- First plan that seeks to stop the pollution from spreading
- Plume has affected 11 public water supply wells, threatens 16

Those who couldn't attend Monday's public hearing can submit written comments through July 7 to:

Jason Pelton

NYS Department of Environmental Conservation

Division of Environmental Remediation

625 Broadway, Albany, NY, 12233

or email: jason.pelton@dec.ny.gov

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WSHU PUBLIC RADIO

[In Wake Of NYPIRG Report, Calls For EPA To Address Long Island Water Quality](#)

By J.D. Allen

June 10, 2019

Long Island's members of the U.S. House of Representatives made a bipartisan call for the federal Environmental Protection Agency to help protect water quality at home.

The New York Public Interest Research Group found that Long Island is plagued with the most contaminated drinking water in the state.

Now U.S. Representatives Lee Zeldin, Kathleen Rice, Peter King and Tom Suozzi want the EPA to set new maximum contaminant levels for drinking water and help protect safe drinking water.

Long Island's drinking water is contaminated with several chemicals like 1,4-dioxane and PFAS from household cleaning supplies and firefighting foam that have seeped into the ground over decades from irresponsible waste management.

The EPA plays a role in finding what levels of toxins are safe to drink and how to prevent future pollution.

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BUFFALO NEWS

[Schumer targets IJC over Lake Ontario flooding: 'We're gonna go after them'](#)

By Thomas Prohaska and Jerry Zremski

June 10, 2019

There's a new team overseeing water levels on the overflowing Great Lakes — but the new Canadian chairman of the International Joint Commission is continuing to defend a water management plan that American politicians blame for flooding on New York's Lake Ontario shoreline.

In an interview on Monday, IJC Canadian chair Pierre Béland said this year's flooding would have been no different even if the agency's "Plan 2014," its controversial water management regimen, had never been enacted.

Asked what he had to say to people who live along the lake, Béland said he sympathizes with those who are in danger of losing their homes. But he added: "Criticisms that are not based on the facts are not useful ... We should all work together. Instead of criticizing each other, we should all work together and base our judgments and our actions on facts and on what can be done."

Béland's comments came shortly after Senate Minority Leader Charles E. Schumer, a New York Democrat, criticized the IJC at a lakeside event in Olcott.

"There's been terrible management by the IJC, no cooperation by the Canadians — they don't give a darn if our areas flood, and that has to come to an end. And we are here to do that, because this has happened over and over and over," Schumer told reporters. "It's going to happen every few years unless we get permanent structural change."

The dispute over what's to blame for the flooding came on a day when it received extraordinary attention. While Béland spoke on the phone from Canada, his American counterpart — former Assemblywoman Jane Corwin of Clarence — was at the White House, meeting with President Trump's Council on Environmental Quality to discuss the flooding.

Meanwhile, the IJC subsidiary that manages Lake Ontario water levels announced it would increase the flow of water into the St. Lawrence River. And at an event in Rochester, Gov. Andrew M. Cuomo pledged to spend \$300 million a year in hopes of preventing future flooding on Lake Ontario.

Yet the argument over the IJC's performance served as the backdrop for all of those events.

Corwin did not return a request for comment after her White House meeting, leaving Béland to speak for the six-member binational commission, which is split evenly between American and Canadian members.

In the interview, Béland defended the IJC's professional staff, which drew up Plan 2014 as a modern way to try to regulate water levels while protecting wetlands and wildlife.

"Our board is made up of experts," he said. "And we totally support these people. They are doing a great job."

Béland said Mother Nature deserves the blame for this year's flooding, which is similar to the water surge that caused more than \$100 million in damage in 2017. This year, just like two years ago, months of unusually persistent rainfall overfilled the entire Great Lakes basin.

It's a "misunderstanding" to think that Plan 2014 is responsible for the high water levels, he said.

"We have no control over the amount of water that flows into Lake Ontario," he said. "The only thing we can do is to throw water out of the Lake Ontario without overly flooding people at the downstream end."

Still, shoreline property owners such as David Hedley continue to blame Plan 2014 for the flooding. The owner of Hedley Boatyard, Hedley showed up at Schumer's press conference in Olcott and said he has suffered more than \$200,000 in damage at his business on the east side of Olcott Harbor.

He said Plan 2014 never should have been enacted.

"Nothing wrong with the old plan," Hedley said. "They gotta get more water out during the winter to accommodate the rainfall and the snow. Do their damn job, that's what I say."

Debate over the plan continued as rainy weather and high winds threatened even more flooding. The National Weather Service posted a lakeshore flood warning for Niagara and Orleans counties Monday morning. The warning was to take effect at 11 p.m. Monday and continue through 2 p.m. Tuesday.

Meanwhile, the IJC, in an unusual step, announced plans to increase lake outflows daily through Thursday, reaching a level matching the highest on record: nearly 2.75 million gallons per second.

That matches the fastest outflow the IJC's lake management subsidiary, the International Lake Ontario-St. Lawrence River Board, allowed during the 2017 floods.

The board's announcement said the flows are above the levels set in Plan 2014 as the maximum safe threshold for commercial navigation on the St. Lawrence River.

Rep. Chris Collins, a Clarence Republican who has been attacking Plan 2014 since before its enactment, lauded the increased water outflows.

"I am glad to see the U.S. chair of the IJC, Jane Corwin, and her new U.S. commissioner colleagues have hit the ground running," said Collins, who lobbied for Corwin's appointment. "Within two weeks of their confirmations they held a listening session with local officials along the Lake Ontario south shore and toured flood damage. Now they have increased the release of water through the St. Lawrence as a first step in easing Lake Ontario flooding concerns."

Collins said he still hopes the IJC will abandon Plan 2014, but Béland didn't sound ready to do that, saying that plan had nothing to do with this year's flooding.

Even if the plan had never been implemented, "it would be exactly the same thing" in terms of flooding this year, he said.

He said the agency must balance the interests of Lake Ontario property owners with those upstream on the St. Lawrence, as well as those of shipping interests and hydropower facilities. And it must do so at a time when climate change may be changing precipitation patterns in ways that are difficult to predict.

That being the case, Béland lauded Schumer's effort to obtain \$12 million in federal funds for a Great Lakes Coastal Resiliency Study, as well as Cuomo's formation of a state task force to carry out a similar study.

"We have a major challenge ahead of us," Cuomo said. "This situation with Lake Ontario is not a once-in-a-lifetime event, and the question is now not if it happens again, but when it happens again."

In Rochester, more than 250 state and local officials attended the first meeting of Cuomo's Lake Ontario commission to hear the governor make his \$300 million pledge.

It's not a giveaway: Local governments will have to match 15% of the state's funding for flood prevention and economic development efforts, as the high water threatens communities whose economies are tied to seasonal activities such as fishing.

While state officials stressed the pressure that climate change appears to be putting on Lake Ontario, the state's commissioner of environmental conservation, Basil Seggos, said in an interview that Cuomo thinks the IJC hasn't done its part in helping New York communities along the lake.

"We've made clear that it's our impression that the shoreline owners on Lake Ontario and the St. Lawrence River have gotten a lesser priority than the shipping interests, and we intend to change that," Seggos said.

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QUEENS COURIER

[Can the BQX streetcar be a viable transit option for Queens' future? Not without some big federal bucks](#)

By Mark Hallum



As the Brooklyn-Queens Connector crawls closer to reality or bust, there is one snag a source sees in the \$2.7 billion proposal by the de Blasio administration to link the two boroughs by a north-south streetcar route.

The project is dependent on the acquisition of \$1.4 billion in federal funding to come through, and a former Federal Transit Administration official says this may be a forlorn hope for the transit project.

“The odds are slim to none that the project will get out of the barn,” Larry Penner, who worked in the FTA for 31 years, said.

The project will rely on a grant through FTA New Starts program, but the March 2019 report from the agency for all projects does not include the BQX for fiscal year 2020. This is problematic, according to Penner, for the five years it takes for grant applications to make its way through the Federal Full Funding Grant Agreement approval process.

How the the streetcar would navigate Newtown Creek and the Gowanus Canal is still unclear.

The latest route projection for the plan puts it closely shadowing and placing its new southern terminus just block from that of the G train instead of making its way all the way to Red Hook as originally promised.

And although the plan has morphed and shortened over the years since its 2015 inception, the cost assessment seems to be on a continuous rise.

Not only would that, but the streetcar route would eat 2,000 parking spaces.

But advocates remain loyal to the promise of BQX, having rallied in front of City Hall in late May prior to a hearing in the Council chamber with the task force assigned to the streetcar’s deployment as well as representatives from city agencies.

Not all members of the task force are fully invested in the plan and question Economic Development Corporation and Department of Transportation officials how they plan to avoid fallbacks.

Councilman Costa Constantinides wanted to know how they plan avoid exasperating gentrification and roadway congestion on 21st Street in Astoria. The EDC said they have taken into account residents who are protected under rent control laws, which have not stopped gentrification in the past, and that businesses will adapt to receive deliveries.

With BQX proposal hardly making it past the environmental review stage four years into the game, city officials said the delay in kickstarting the streetcar project is not out of the ordinary when compared to other light rail efforts in other cities.

Councilman Jimmy Van Bramer expressed a dubious attitude toward the prospect of an agency now under the control of the Trump administration awarding any funds at all to New York City in the coming years at the May 30 hearing.

Streetcars and light rails went extinct around the turn of the century with many cities opting instead for underground options for the versatility of buses and freedom from vehicular disruption for subways.

But the 21st century has seen the reemergence of this technology with Cincinnati launching its Bell Connector on a 3.6 mile loop of the city in 2016.

Phoenix, Arizona, known for its never-ending sprawl, even began its own service with the 26.3-mile Valley Metro Rail, for which construction began in 2005 and opened for business in 2008.

According to the MTA, many of the bus routes across the city, including Queens, follow the old streetcar routes. A template they are attempting to break for a bus system the agency is hoping will serve the needs of modern riders.

As part of the discussion in 2016 for the BQX, the changing needs of commuters has entailed a demand to reach the Queens and Brooklyn waterfronts and highlighted the antiquated spoke and wheel design of subways centered around the Manhattan.

The outer boroughs are now seeing the higher job growth than before and the G train simply does not cut it for north-south commuters who opt instead for schlepping through Manhattan

Penner concluded in a recent email to QNS that the surest way to move people along the tech hubs of Queens and Brooklyn would not be a light rail, but buses.

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ASBURY PARK PRESS

[Jersey Shore surfers brave bacteria-filled water for big waves](#)

June 10, 2019

Most surfers know it's best to avoid surfing near pipes that dump stormwater into the ocean soon after a storm, due to the increased chance of getting sick from bacteria that enter the surf.

Many do it anyway because the periods just after storms often bring bigger waves, prompting them to hold their nose and brave the so-called "chocolate tube" or the "root beer float."

Although the relationship between heavy rain, outfall pipes and water-borne bacteria has been well established, it continues to be studied around the country and the world.

Dirty water? Bacteria persists in Navesink River, rain and overdevelopment to blame

One such study is underway at New Jersey's Monmouth University, where researchers are evaluating water quality at popular surfing beaches along the Jersey shore with an eye toward documenting higher levels of harmful, illness-causing bacteria in the water after storms.

The idea is to give surfers and others who use the water more information to make more informed decisions about when to surf and what might be in the water around them.

"It's not a question of if you're going to get sick, it's when," said Richard Lee, a surfer and executive director of the Surfers Environmental Alliance, which is funding the \$30,000 yearlong study in New Jersey. "There have been ear infections, eye infections, respiratory infections, intestinal problems.

"The water is murkier; sometimes we call it the 'root beer float,'" he said. "You get this orange-brown float on the surface."

A 2010 study by the Surfrider Foundation found surfers are more likely to get sick from being in the water than other beachgoers. This is partly because they are in the water more frequently and for longer periods, and ingest 10 times more water than swimmers, the survey found.

A team of student and university staff researchers is taking water quality samples before and after each rainfall this year.

“When we get big storms, the stuff that’s getting into the water is what’s making us sick,” said Jason Adolf, a marine science professor at Monmouth. Most of the bacteria come from pet waste in streets that gets washed down drains and out into the ocean, but occasionally sewer systems overflow into storm drain systems, as well, adding human bacteria to the mix.



On an unusually warm day -- for February -- surfers in Asbury Park hit the waves at North Beach. Mike Davis and Tariq Zehawi, Asbury Park Press

New Jersey authorities also do their own beach water quality testing along the shore, but mostly during summer months. The Monmouth testing will continue through fall and winter, when storms can be more numerous and surfers are still in the water. Jeff Weisburg, a specialist professor who teaches about microbiology, health and disease, said fall hurricanes usually produce the best waves of the year on the East Coast.

While the state testing is used to issue swimming advisories and if necessary, to temporarily close beaches when bacteria levels are high, the Monmouth research is aimed more at documenting local conditions at particular beaches throughout the year.

Want unlimited access to environmental news from the Jersey Shore area? Stick with APP.com and consider a digital subscription.

Larry Hajna, a spokesman for the New Jersey Department of Environmental Protection, said the state has no plans to incorporate the Monmouth research into its own beach monitoring program, and noted “the connections between heavy rainfall, stormwater pipe discharges and temporary increases in bacterial levels are well documented.”

Similar work has been going on for years wherever surfers take to the water. High school students in Santa Monica, California, have tested the waters at popular surfing beaches there. Health departments in Los Angeles and San Diego monitor water quality near outfall sources.

And in the U.K., a group called Surfers Against Sewage collected evidence of raw sewage entering waterways and pushed for stricter laws to prevent it. It sent out over 244,000 real-time text alerts about water quality during the 2016 bathing season.

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MID-HUDSON

Update – Clean fill operator claims something stinks in Saugerties

June 10, 2019



Joseph Karolys says he is bringing in only clean screened fill

SAUGERTIES – Joseph Karolys is fighting a battle with the Town of Saugerties, which seems on its surface to be about an industrial operation located at 1446 Rt. 212 – a windy stretch of state highway, halfway between the villages of Woodstock and Saugerties. He lives at the site with his wife and two teenage children. The business has operated there for nearly three years.

A closer look at the Saugerties dirt war reveals a much more complicated story – one which could eventually leave the municipality with mud on its face.

An investigation conducted by Mid-Hudson News indicates that the Karolys' opponents may be "poisoning the well," both figuratively and literally, in the framing of controversy and debate. Questionable surveillance tactics, including multiple drone deployments and zoom cameras, have been compounded by an alleged handgun incident, resulting in police reports.

Karolys & Son said he receives "clean fill" trucked upstate from the New York City metropolitan area, separating larger items, while reselling the remaining dirt. They have a DEC permit, and grandfather status, the owner maintains, but have recently come under fire by activists and officials alleging that the material might be contaminated.

A DEC statement issued on Monday said, "On May 17, DEC inspected three Karolys properties, including its registered C&D facility, in the town of Saugerties. DEC is investigating these sites to determine compliance with DEC's regulations. DEC does not yet have sampling results from the laboratory. If violations are found, DEC will undertake enforcement action, including potential penalties, to protect public health and the environment."

"We bring in clean fill, and screen it, and select certain products out of it to salvage, like cobblestone, bricks, boulders, landscape rocks, things like that, and make a screen fill product that's available for sale," Karolys explained from his front porch – located less than 50 feet from the 1,000-square-yard pile of material, dotted with several excavators, dump trucks, and screener machine.

"I just fluffed the whole pile up, as you can see; we're feeding it through the screener," Karolys said. "It's 90 percent dirt; there's chunks of concrete, bricks and rocks in it," he said of the material, which sits in full view of the busy road. "There's two other sites where we deposit the rubble that comes off the screener, the rocks and concrete chunks, things like that. I think I'm being treated unfairly, because for two and a half years, the town was on my side, with what I was doing here, and they gave me a letter saying what I was doing was fine. And all of a sudden, due to complaints with the neighbors, they changed their mind, and said I'm out of compliance."

"The site was grandfathered in 1989, when zoning came to Saugerties, by Ray Rothe as a trucking and excavating company, with origination back to 1969," Karolys maintained. Similar activity is going on at the adjacent parcel, across the street, and down the road. The town has never issued a permit, he said; and Karolys holds the only DEC permit from the state.

Saugerties issued a stop-work order on the Karolys operation last winter, and the local police blocked off their driveway. Two Article 78 lawsuits were filed in State Supreme Court, allowing the business to continue pending decision. One case attempts to overturn an adverse ZBA determination, while the other addresses enforcement. The DEC executed a warrant to test three Karolys sites on May 17, following a May 14 community forum held at Saugerties High School by Catskill Mountainkeeper.

"The DEC has been here several times since I've opened, they inspect regularly, they come on the property and inspect basically whenever they want, that's part of having the DEC permit. If they had seen anything wrong, I would have been shut down immediately, they have the power to do that," Karolys said. He has not heard back from regulators since the May 17 raid.

"I don't presume to speak for the government of the State of New York, but I do know that if they had a spike to drive, they would have had it sharpened up, and driven it earlier than now," said attorney Melvin Higgins, who represents Karolys. DEC was contacted for comment, but has not provided any update on the matter. Saugerties Town Supervisor Fred Costello's office voice mailbox is full and cannot take messages seeking comment.

Higgins also claimed that the DEC officials removed Karolys and his employees from the property, and refused to provide him with the opportunity to conduct independent tests on their samples – exceeding the terms of the warrant.

Both DEC and State Health Department contacted Karolys in writing on May 17 – same day as the raid – offering free water tests on two of his Fel Qui Road properties, due to contamination leaching from the adjacent Saugerties town landfill.

Karolys and his wife both grew up locally, familiar with the history of contaminated sites in Saugerties and nearby towns, vocally criticizing what they consider environmental crimes poisoning the community – and public officials who look the other way.

"The bottom line is the town should enforce its laws equally. And look at the crooked hypocrite politicians who are always pointing the spotlight on someone else to shadow their sins," Karolys wrote in a recent Facebook post dated May 23. Other social media posts criticize town violations, or show photos and videos of his incoming truck loads.

"My wife was here last week; they had three drones flying over. We believe they belong to the neighbor, because she saw them flying back there, to [whistleblower] Michael Ferraro's house, who also has a surveillance camera watching me 24-hours-a-day, seven-days-a-week. I don't know what they're looking for; there's nothing that changes from the day to day operation, it's all the same," Karolys said.

On March 1, truck driver Carlos Bernal-Araujo, who lives in Queens, noticed a man videotaping his delivery from across Route 212, and the cameraman pointed a handgun at him from a vehicle when he approached to ask why he was being filmed, according to a police report taken by Saugerties Police Chief Joseph Sinagra. The gunman, who was parked on the shoulder of the state highway, shouted "get off my property!" at the frightened truck driver, the report alleges. Karolys contends that whistleblower Ferraro is married to the daughter of the neighbor across the street – who is also allegedly running an unpermitted fill screening business – and believes he can identify the gunman.

Higgins said he checked with Chief Sinagra about the complaint and was told that the matter remains under investigation. Karolys said it took him several hours to convince the police to even accept the report.

“We’re just a hard-working family trying to make a living, not really doing anything different than a lot of other contractors in this town,” Karolys said. “I wish everyone well; I don’t wish any harm on anyone, we just want to be left alone, and be able to enjoy our property, and be able to work, just like everybody else does, that’s all.”

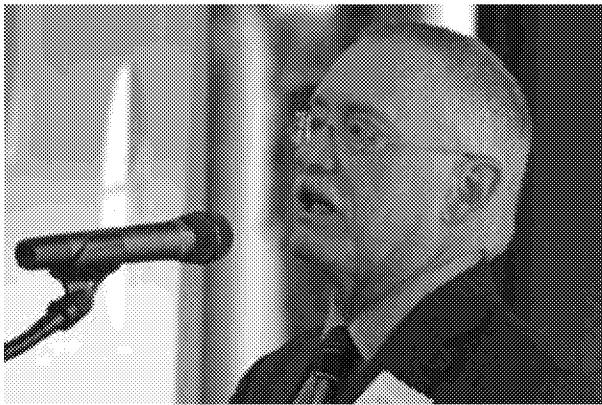
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NJ SPOTLIGHT

Wrestling with Devilish Details of How to Curb Energy Use in NJ

By Tom Johnson

June 10, 2019



R. Neal Elliott of the American Council for an Energy-Efficient Economy

With a new law establishing tough mandates to reduce energy use, there is widespread agreement New Jersey has the potential to achieve huge benefits and savings for customers but far less consensus on how the state will realize those goals.

It is a dilemma as policymakers, utilities and clean-energy advocates struggle to iron out the details on how to implement the year-old law requiring electric and gas companies to curb customer use by 2 percent and 0.75 percent, respectively, annually.

If the Murphy administration aims to achieve its ambitious clean-energy agenda and sharply reduce greenhouse-gas emissions, New Jersey must aggressively pursue those energy-efficiency goals, according to panelists at an NJ Spotlight roundtable on Friday in Hamilton Township.

“Energy efficiency is the foundation of any effective climate change policy,” said R. Neal Elliott, senior director of research for the American Council for an Energy-Efficient Economy, the keynote speaker at the event. “It’s the least cost, easiest and most accessible.”

Elliott identified several opportunities for New Jersey to achieve significant reductions in energy use, particularly in the transportation sector, which contributes 48 percent of the state’s greenhouse-gas emissions.

Switch to freight by rail?

One option is to reduce truck traffic by switching to freight by rail, he said. Another step would be to establish greenhouse-gas emission reduction targets for the transportation sector. “Now’s the time to really turbo-charge everything,” he said.

A recent study by a consultant for the New Jersey Board of Public Utilities concluded the state’s targeted goals are achievable, projecting they could end up saving customers — in a state with high energy costs — \$14 billion over the next decade. But the analysis only received a lukewarm response from the state agency, with commissioners noting they were not endorsing its findings.

The study left numerous issues unresolved: Who administers the overall program — utilities or the state, how do utilities recover losses they incur when customers reduce energy use, and what kind of incentives and penalties occur if the reductions are met or fall short?

Those issues are likely to be resolved by an advisory group that will help the BPU and others answer the questions. In the meantime, proponents want the state to get moving on trying to achieve those goals.



David Daly, president and COO of PSE&G

“The biggest question we have today is the challenge of how we begin to implement these programs and how we accelerate this as quickly as possible,” said David Daly, president and COO of Public Service Electric & Gas, the state’s largest utility.

PSE&G has proposed a \$2.8 billion energy efficiency program to the BPU even though the state agency has yet to define the parameters and other details of the law. Nevertheless, it has won backing from some clean-energy advocates and energy-efficiency firms, who want the state to get moving on implementing energy-saving measures.

State cannot afford to overpay

For the most part, panelists seemed to agree that utilities are most well-positioned to convince customers to undertake energy-efficiency measures. They also suggested the most effective energy-saving programs occur in states where utilities recover lost revenues from those efforts.

Not so fast, argued Stefanie Brand, director of the New Jersey Division of Rate Counsel.

While endorsing energy efficiency, Brand warned the state could not afford to develop a program that would overpay for its acknowledged benefits, a problem New Jersey is now trying to rectify with its solar installation program, a system most agree is way too expensive.

Having the utilities in charge of energy-efficiency programs did not work in the past, Brand noted. “To have them as sole provider of energy efficiency (as PSE&G advocates),” she said, “monopolizes a competitive industry” now in place.

Brand also argued against decoupling, a mechanism that allow utilities to recover lost revenue from customers using less gas and electricity. “You will add a profit to a utility for every dollar they spend,” she said, noting the companies already are getting a return on their fully weighted cost of capital. “It’s a great deal.”

'Let's be real here'

But Daly, too, argued utilities are in the best position to deliver energy savings to their customer, while adding there are inefficiencies in government, particularly as it handles both oversight and execution of state policies.

He argued for some sort of decoupling provision, saying without one, it would be a failed financial outcome for the utility, one that could amount to \$160 million. Brand countered that \$160 million is a rounding error for PSE&G. "Let's be real here," she said.

Isaac Gabel-Frank, a vice president of Gabel Associates, noted the Clean Energy Act allows for utilities to collect lost revenue from energy-efficiency measures. If not decoupling, it likely means utilities will have some alternate form of lost-recovery mechanism, he said.

Julian Boggs, policy director of the Keystone Energy Alliance, said energy-efficiency measures need to compete with generation as a resource. "If you are making an investment in energy efficiency, that has to be a good investment," he said.

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NJ SPOTLIGHT

Naturalists Renew Calls to Halt Horseshoe Crab Harvest in Delaware Bay

By Jon Hurdle

June 10, 2019

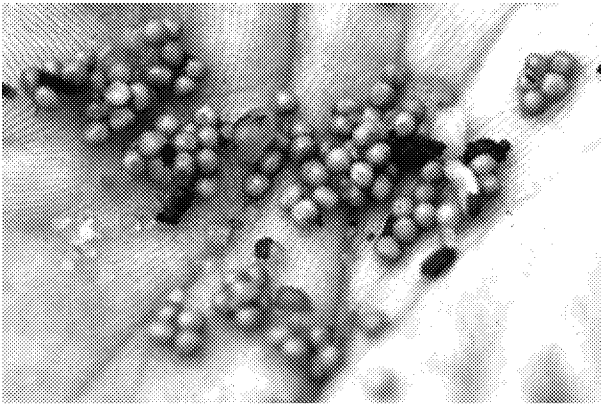


Horseshoes crabs in Delaware Bay

Larry Niles has been working to protect migrating shorebirds on New Jersey's Delaware Bay beaches for the last 23 years, and he's still worried that some of them might go extinct.

Niles, a former Department of Environmental Protection biologist who now runs his own wildlife-investigating company, leads teams of scientists and volunteers who trap, tag, weigh, measure and then release the birds which stop briefly on the bay beaches during their long-distance spring migration from South America to the Canadian Arctic.

The work is designed to assess the health of half a dozen bird species that refuel on the eggs of the bay's horseshoe crabs in places like Reeds Beach in Cape May County after flying thousands of miles from their wintering grounds. Scientists began sounding the alarm about the bird populations in the 1990s when the commercial fishing industry harvested the crabs for bait in unprecedented numbers, causing sharp declines in both eggs and birds.



Horseshoe crab eggs

Despite a New Jersey moratorium on the crab harvest since 2008, reduced quotas for three other bay states that still take crabs, and a bay-wide ban on harvesting egg-laying females, shorebird numbers have not recovered to anywhere near their levels in the 1980s before the over-harvest of crabs began.

So conservation groups led by New Jersey Audubon are renewing their efforts to persuade the other bay states — Delaware, Maryland and Virginia — to ban the crab harvest, and to persuade biomedical companies to stop using lysate, an extract from horseshoe crab blood, to test for toxins in their products and switch to a synthetic alternative.

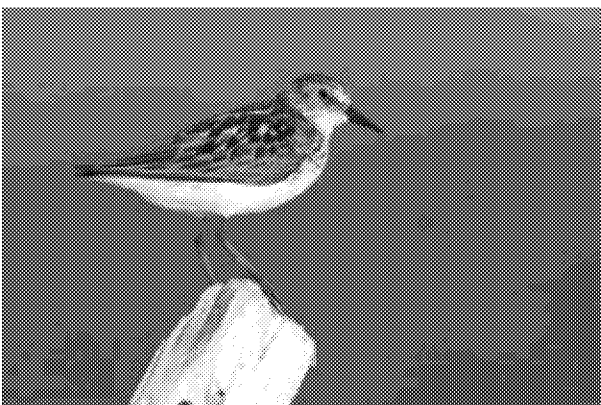
Time to 'ramp up efforts'

"What we've tried to do is work within the framework of the Atlantic States Marine Fisheries Commission that would allow the harvest to be determined by the status of the crab population and the shorebird population," said David Mizrahi, vice president of research and monitoring for New Jersey Audubon. "Well, that hasn't worked so we really feel like it's time to ramp up our efforts to move to the next level."

A new campaign, also backed by environmental groups like the American Littoral Society and the Delaware Nature Society, aims to fully restore the crab population by 2030 from its current status estimated at only 30 percent of the bay's carrying capacity.

Without a significant and sustained increase in horseshoe crabs, the advocates say there will be continued doubts about the long-term survival of the shorebird species whose massed presence on the bay beaches each May draws scientists and volunteers from around the world to witness a great natural spectacle.

Concern is focused on the red knot, a gray-and-red bird weighing less than five ounces, whose numbers moving through the bay this spring were estimated at about 30,000, up from a low of just 10,000 in the early 2000s but still only about a third of their level during the 1980s. Though the numbers have been creeping up lately, naturalists say the species still isn't numerous enough to withstand shocks like severe weather in its Arctic breeding grounds, or development along its migration route, leaving it vulnerable to eventual extinction. The bird was listed by the federal government as a threatened species in 2015.



Semipalmated sandpiper

Other species of concern include semipalmated sandpipers and ruddy turnstones, both of which were among the hundreds caught and processed by Niles and his volunteers during their work on the bay beaches this spring.

If the crab population is restored, it will also benefit fish and other marine species that feed on the crabs, and which have themselves been depleted by the crabs' decline, advocates say. A recovery in those fish would help commercial and recreational fisheries.

The crab harvest is controlled in part by the Atlantic States Marine Fisheries Commission, an interstate regulator, which sets quotas and says there has been some increase in the number of mature female crabs since it banned the female harvest in 2013.

Commission data show the number of mature female crabs in the bay rose to 7.8 million in 2017 from 5.4 million in 2011 before the quota system began, and that the number of red knots visiting the bay on the spring migration is fairly stable at around 45,000, as measured by a different method from that used by conservationists.

Female crab numbers have not rebounded to the 11.2 million, or 80 percent of the bay's carrying capacity, that could lead the commission to lift its ban on the harvest of females, but the data are showing a steady increase, said Mike Schmidtke, the commission's Fishery Management Plan Coordinator.

"Right now, there seems to be a decent abundance, and a stable if not increasing trend of horseshoe crabs in the Delaware Bay so the package that allows some level of bait continues to be selected," he said, referring to one of a set of alternatives to crab management that the commission has chosen since 2013.

Rebound? What rebound?

But campaigners like Niles deny the crabs have rebounded, pointing to evidence that the density of crab eggs is sharply lower than in prior decades, and is not recovering.



Shorebirds mass each May at Reeds Beach, Cape May County to gorge on horseshoe crab eggs before resuming their migration to breeding grounds in Arctic Canada.

On Reeds Beach, for example, the density of eggs has dropped from more than 100,000 per square meter in 1991 to just 7,000 in 2017, according to New Jersey Audubon.

"There's no increase," Niles said, referring to the commission's claim that the female crab population is rising. "If there was an increase, it would show up in egg densities."

Armed with what they see as evidence of the commission's failure to restore crab numbers over the last decade, the conservation groups are making a new attempt to persuade the other bay states to follow New Jersey's lead and impose their own bans on the crab harvest.

But officials in Delaware, which is permitted to take around 160,000 male crabs this year after June 7 — when the shorebird migration ends — indicated they have no plans to stop.

“According to the most recent peer-reviewed assessment approved for use in horseshoe crab management, the Delaware Bay Region’s horseshoe crab population is abundant and stable, with no sign of population decline,” the state’s Department of Natural Resources and Environmental Control said in a statement. “Female spawning biomass has increased, with low mortality. DNREC therefore supports the current managed, sustainable harvest of horseshoe crabs in Delaware.”

Delaware tried to impose a ban

Delaware proposed a ban in 2006 but was sued by the fishing industry and lost in court.

Officials in Maryland and Virginia did not respond to requests for comment.

If policy change at the commission or in the states looks unlikely, conservationists are more hopeful that they can persuade the biomedical industry to use a synthetic material called RfC instead of the crab-based lysate, for which an unknown number of Delaware Bay crabs are bled each year. At least 15 percent die because of the process, and the survivors may not be able to breed, the advocates say.

The industry’s switch is being led by the pharmaceutical giant Eli Lilly, which began using rFC to test its new products in 2016 and expects the changeover to be 90 percent complete by the end of next year, said Jay Bolden, senior consultant biologist for the company.

Hopes of persuading other drug makers to follow are pinned on possible changes by pharmacopeias, international manuals that set pharmaceutical industry standards for drug development. The manuals currently require the horseshoe crab-based product to be used to test for endotoxins — toxins contained in the cell walls of bacteria — but their authors are indicating that they may at some point be willing to specify the synthetic product instead, Bolden said.

Crabs taken for bleeding are not included in the commission’s quotas, and their numbers and mortality rates are not published because of business confidentiality concerns on the part of the companies that bleed the crabs.

While the new campaign seeks to change corporate and government policy, the Delaware Bay scientists and dozens of volunteers continue their annual “catch” at places like Reeds Beach where they count the number of birds passing through and assess whether they are in good enough condition to complete their epic journey.

Volunteers weigh in



Larry Niles (right) and volunteers weigh, measure and tag red knots at Reeds Beach, Cape May County, before releasing them.

On May 21, groups of scientists and volunteers weighed, measured and tagged three species of the birds after capturing them in net a short time earlier. One red knot weighed an unusually heavy 221 grams (7.8 ounces), indicating that it had about doubled its body weight since arriving from South America, taking advantage of this year’s good level of crab spawning.

Gwen Binsfeld, 65, has been coming from her home in Kings City, Ontario, Canada to manage volunteers on the Delaware Bay for the last 15 years. She enjoys watching the birds put on weight during their brief stopover, and hopes her efforts will help species survive.

"We have to restrict the number of people who come out to help," she said while waiting in a sand dune for a trapping net to be fired over a flock of birds on the beach. "They want to see the birds up close. Hopefully, they get an emotional connection to the birds and will want to help preserve all birds."

Clive Minton, 85, has traveled from his home in Melbourne, Australia every year for the last 23 years to help with the Delaware Bay catch, and said he is motivated by both the science and the spectacle.

"It is an incredible bird spectacle when the shorebirds are stopping over here in May in their tens of thousands just for a week or two weeks," he said, while attaching metal bands to the legs of red knots. "It is one of the world-famous places to go to see migratory shorebirds at their best: close to, tame, in breeding plumage and in large numbers."

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National News

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Reuters

<https://www.reuters.com/article/us-autos-emissions/major-automakers-back-compromise-on-u-s-vehicle-emissions-rules-urge-deal-idUSKCN1T72SV>

Major automakers back compromise on U.S. vehicle emissions rules, urge deal

By David Shepardson 06/07/19

WASHINGTON (Reuters) - A group of major automakers on Thursday backed a compromise on vehicle emissions aimed at heading off a confrontation between California and the Trump administration over requirements through 2026, warning that the lack of a deal could lead to "an extended period of litigation and instability."

In a letter to California Governor Gavin Newsom signed by 17 major automakers including General Motors Co, Toyota Motor Corp and Volkswagen AG, the companies urged a compromise "midway" between the Obama era standards that require annual decreases of about 5% in emissions and the Trump administration's proposal that would freeze vehicle emissions requirements at 2020 levels through 2026.

The automakers are making a last-ditch appeal to try to revive talks in order to avoid years of uncertainty over what rules they will face.

In a separate letter to President Donald Trump on Thursday, they urged "both the federal government and California to resume discussions and to remain open to regulatory adjustments."

The letters were also signed by Daimler AG, Hyundai Motor Co and Honda Motor Co Ltd. The companies said a final deal should "also include flexibilities that promote advanced technology for the sake of long-term environmental gains and U.S. global competitiveness." The letters were not signed by Fiat Chrysler Automobiles NV.

In February, the Trump administration ended talks with California over federal plans to roll back fuel economy rules, setting the stage for what could be a lengthy legal fight over the state's ability to regulate greenhouse gas emissions.

White House spokesman Judd Deere said on Thursday that California had “failed to put forward a productive alternative, and we are moving forward to finalize a rule with the goal of promoting safer, cleaner, and more affordable vehicles.

California did not immediately comment on Thursday.

The automakers told Trump a deal “would provide regulatory certainty and enhance our ability to invest and innovate by avoiding an extended period of litigation and instability, which could prove as untenable as the current program.”

Automakers previously said they opposed a freeze but wanted the rules revised to account for changes in oil prices and consumer demand.

LAWSUIT THREATENED

California’s rules have been adopted by more than a dozen states. Eighteen states, including California, have vowed to sue the administration if it finalizes the freeze. In August 2018, the Environmental Protection Agency and the National Highway Traffic Safety Administration in a joint proposal called for stripping California of the right to impose stricter emissions rules or to require a rising number of zero-emissions vehicles.

California Air Resources Board chair Mary Nichols in draft remarks last month released by the agency warned that the increasing need to fight climate change “might lead to an outright ban on internal combustion engines.” She later told California news website Calmatters.org that no ban was imminent. “The message here was intended to be heard by the auto industry,” she told the site.

The House Energy and Commerce Committee is planing to call Trump administration officials to testify at a hearing on the vehicle emissions proposal the week of June 17, two people briefed on the matter said.

In April, Reuters reported that the EPA was expected to require a small increase in the yearly fuel efficiency gains but said the precise figure had not been finalized. EPA Administrator Andrew Wheeler in April told Reuters that “our final regulation is not going to be the same as our proposal.”

California has been allowed to set state standards that are stricter than federal rules under an exemption granted by the EPA.

EPA and NHTSA have not yet submitted their proposal to the White House Office of Management and Budget for review, a necessary step before the final regulation can be published.

The Trump plan would increase U.S. oil consumption by about 500,000 barrels per day by the 2030s but reduce automakers’ regulatory costs by more than \$300 billion, the agencies said.

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The Washington Post

https://www.washingtonpost.com/climate-environment/white-house-poised-to-relax-mileage-standards-rebuffing-automakers-and-setting-up-likely-fight-with-calif/2019/06/07/7dc1174c-8939-11e9-98c1-e945ae5db8fb_story.html?utm_term=.e8ab70e33004

White House poised to relax mileage standards, rebuffing automakers and setting up probable fight with California

By Juliet Eilperin and Brady Dennis 06/07/2019

A last-minute push by automakers appears unlikely to sway the Trump administration from abandoning President Barack Obama’s signature climate policy to improve mileage standards for cars and light trucks, two government officials said Friday.

The administration's plan to freeze federal fuel-efficiency requirements for six years and end California's authority to set its own standards has injected uncertainty into the auto market and raised the prospect of a drawn-out legal fight between federal officials and the nation's biggest state.

The Environmental Protection Agency and the Transportation Department are poised to finalize a proposal this summer that would set federal car standards at roughly 37 miles per gallon, rather than raising them to nearly 51 miles per gallon for 2025 models. The rule would also revoke California's existing waiver to set its own rules under the Clean Air Act, a practice the federal government has sanctioned for decades.

On Thursday, 17 U.S. and foreign firms sent a letter to both President Trump and California Gov. Gavin Newsom (D), urging them to "resurrect" talks to avoid harming the industry and American consumers. They warn that only a nationally agreed-upon set of rules would avert "an extended period of litigation and instability, which could prove as untenable as the current program."

But White House officials rebuffed the automakers' request Thursday, saying there was no prospect of further negotiation with the California Air Resources Board (CARB). The two government officials, who were briefed on the discussions, spoke on the condition of anonymity to describe internal deliberations.

"As we acknowledged earlier this year, CARB failed to put forward a productive alternative, and we are moving forward to finalize a rule with the goal of promoting safer, cleaner and more affordable vehicles," said White House spokesman Judd Deere in an email.

Administration officials say that the nation needs to readjust the emissions targets because consumers prefer bigger and less fuel-efficient vehicles than regulators initially envisioned and that keeping them in place will spur Americans to drive older, less safe vehicles.

But California leaders show no signs of budging.

"Despite the White House's rejection of the automakers' appeal, we stand with those automakers, other states, and environmental leaders in pushing for one national standard — one that doesn't backtrack on the progress states like California have made in protecting the climate and our kids' health," Newsom said in a statement Friday.

In 2009, the Obama administration reached an agreement with automakers and officials in California to establish the first-ever carbon standards for the vehicles. Limiting cars' carbon output and improving fuel efficiency reduces the amount of carbon dioxide released into the atmosphere, helping to curb the pace of climate change.

[Experts question if lower gas mileage actually saves lives]

In February, CARB officials said the administration had broken off communications before Christmas and had neither responded to the state's proposals nor offered one of its own.

An aide to California Attorney General Xavier Becerra (D) said that the state was still committed to defending the standards that California, automakers and the federal government agreed to back in 2009. Thirteen states and the District of Columbia have signed on to adopting whatever tailpipe standards California sets.

In their letter to the California governor, the automakers wrote, "We know that reaching an agreement has been challenging, but the stakes are too high and the benefits too important to accept the status quo."

Trump officials have often framed their deregulatory agenda as an effort to create more certainty for U.S. businesses and to hand more power back to individual states instead of the federal government.

But some critics argue that the administration's tailpipe proposal would accomplish neither of those goals. California's power to set its own standards dates to 1967 legislation and has been reaffirmed every time Congress amended the law.

"The Trump EPA's profoundly cynical version of states' rights does not include the fundamental rights of states — long guaranteed under the Clean Air Act — to protect millions of residents from harmful tailpipe pollution," said Chester France, a consultant for the Environmental Defense Fund and a former EPA official.

Critics say the proposed freeze would benefit the oil and gas industry and cost consumers more at the pump. They also warn that a legal battle with California could result in a sweeping upheaval in the nation's automotive market, should carmakers eventually have to meet different standards in different states.

One major carmaker, Fiat Chrysler Automobiles, did not sign the industry's letters for another round of negotiations. In a statement, the automaker said its position had not changed since last fall, when an executive testified that the company is "in favor of ongoing fuel economy improvements in the fleet" but that policymakers needed to factor in the "realities" of how the auto market had changed over time.

White House officials had lobbied automakers in late February to back whatever rule the administration finalizes, according to multiple senior administration officials, and brought some of the firms back on an individual basis to solicit additional feedback. But as it became clear that the administration was forging ahead with its original plan, many manufacturers decided to make a more public statement.

Sen. Thomas R. Carper of Delaware, the top Democrat on the Senate Environmental and Public Works Committee, urged the industry to work directly with California given the administration's stance.

"While it is not unhelpful that the automobile industry sent this letter, we are now in the 11th hour, and I fear it won't be long before the rubber meets the road and the administration's reckless rollback is finalized," he said.

Bill Becker, president of Becker Environmental Consulting, said in an email that the "Hail Mary" pass from the industry won't make a difference.

"The automakers' efforts are too little and too late to stop the Trump administration from eviscerating the Obama clean car standards," Becker said. "The Trump proposal, if adopted, will contribute to tens of thousands of premature deaths and millions of incidences of serious illnesses, undermine states' compliance with the Clean Air Act, and impose serious impacts on businesses."

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Chemical

Energywire

States, greens push court to block methane rule change

<https://www.eenews.net/energywire/stories/1060534391/search?keyword=EPA>

Pamela King, E&E News reporter

California, New Mexico and a coalition of environmental groups last week asked a federal judge to stop the Trump administration's latest effort to gut limits on methane emissions from energy development on public lands.

Both the states and the green groups argued that the U.S. District Court for the Northern District of California should block the Bureau of Land Management's revisions to the 2016 methane rule and reinstate the Obama-era regulation.

"Despite an extensive record demonstrating a pervasive and preventable problem of waste of public resources by private companies, the Rescission largely reverts to the pre-2016 status quo BLM previously determined led to unacceptable waste and health and environmental harms," the environmental groups wrote in their Friday motion for summary judgment.

"In doing so, BLM runs roughshod over its statutory duty to prevent waste, fails to base its changed positions on evidence or rationally explain them, and ignores significant environmental impacts."

Tossing the Obama administration's rule removes important protections against a potent greenhouse gas and robs taxpayers of royalties that could be captured from escaped gas, the states and green groups argued.

"Repealing restrictions on the venting and flaring of natural gas, particularly when these wasteful practices have reached unprecedented levels, shows the Trump administration's arrogant disregard for its legal obligations to be a good steward of our nation's natural resources," David Hayes, executive director of the State Energy & Environmental Impact Center at New York University, said in a statement.

"The Interior Department's repeal is a blatant give-away to the oil and gas industry that is unlikely to survive judicial review."

The states and environmental groups asked the California court to bear in mind its decisions overturning two attempts by the Trump administration to suspend the Obama rule (Energywire, May 3, 2018).

"This is the third time the Trump Administration has tried to gut this rule," California Attorney General Xavier Becerra (D) tweeted Friday.

"We'll keep fighting for our people and our planet.

President Trump's BLM formally revised the methane rule last fall, locking in a long list of changes that effectively eradicated the 2016 regulation.

The overhaul violates the Administrative Procedure Act, National Environmental Policy Act and Mineral Leasing Act, the states and environmental groups argued.

They contend BLM did not offer a reasoned explanation for the rule rescission and failed to take a "hard look" at the environmental impacts of the move.

BLM's revised rule flouts the bureau's own waste prevention mandate, the challengers argued.

"Contrary to the requirements of the APA, BLM failed to offer a reasoned explanation for repealing the key provisions of a Rule that, just two years prior, it determined was necessary to fulfill its statutory mandates to prevent waste, ensure that wasted gas is subject to royalties, and safeguard the public welfare," the states wrote in their Friday motion for an injunction.

"Instead, the justifications that BLM does provide for the Rescission lack merit and are contrary to BLM's governing statutes and the evidence in the record, providing several independent bases for this Court to find the Rescission to be arbitrary and capricious."

Several industry groups and the state of Wyoming have joined BLM and Interior to defend the Trump regulation in court.

The industry groups said reinstatement of the Obama rule would create a major financial burden for their members, particularly for small operators (Energywire, Sept. 24, 2018).

They argue that methane oversight falls to EPA and the states, not to BLM.

EPA is in the process of rolling back its own methane standards.

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Bloomberg Environment

Oil Refiners Challenge EPA Rule Allowing High-Ethanol Gas Sales

<https://news.bloombergenvironment.com/environment-and-energy/oil-refiners-challenge-epa-rule-allowing-high-ethanol-gas-sales>

By Jennifer A. Dlouhy and Andrew Harris

The top U.S. oil refining trade group on Monday filed a lawsuit challenging an EPA rule allowing year-round sales of higher-ethanol E15 gasoline.

American Fuel & Petrochemical Manufacturers association filed its petition for review with U.S. Court of Appeals for the District of Columbia Circuit, hours after rule was published in the Federal Register on Monday.

The move challenges a just-finalized EPA rule that benefits corn-based ethanol by waiving E15 gasoline containing 15% ethanol from Reid vapor pressure requirements that had barred sales during summer months in smog-plagued areas.

NOTE: Oil cos. and associations had telegraphed the legal challenge, arguing the EPA change violates the Clean Air Act.

EPA Assistant Administrator Bill Wehrum said he's confident rule was "wholly consistent with the act," in a May 31 conference call with reporters. "We believe we have very good defenses to the claims they are going to bring, and we believe we are going to prevail at the end."

NOTE: President Trump is set to tout the E15 change during a visit to Iowa on Tuesday.

The case is American Fuel & Petrochemical Manufacturers v. U.S. Environmental Protection Agency, 19-1124, U.S. Court of Appeals, District of Columbia Circuit (Washington).

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Bloomberg Environment

Workers Will Die Unless EPA Bans Solvent, Advocates Say

<https://news.bloombergenvironment.com/environment-and-energy/workers-will-die-unless-epa-bans-solvent-advocates-say>

By Pat Rizzuto

More laborers working with a toxic solvent will die while the EPA reconsiders the strategy to protect them, occupational physicians, advocates, and researchers predict.

At least three workers exposed to the paint stripping solvent, methylene chloride, died since 2017 when the Environmental Protection Agency proposed a rule (RIN:2070-AK07) to ban consumer and most commercial uses, said Jonathan Kalmuss-Katz, a staff attorney working on labor issues at Earthjustice.

Separate research released in April showed that 83 people died from methylene chloride exposure over nearly four decades.

"Now, tragically we'll see how many die" while the agency revisits its previous conclusion that workers faced unreasonable risks, and decides how it may reduce those risks, Kalmuss-Katz said June 5. He referred to a change the EPA made March 27 when it issued a final rule that banned consumer—but not workplace—uses of paint strippers made with the solvent.

Instead, the agency floated an idea (RIN:2070-AK48) to develop a training, certification, and limited access program to protect contractors, furniture strippers, antique restorers, and other workers who use methylene chloride to strip paints and other coatings. The EPA said the change in course was spurred by small businesses and other groups, who say they rely on the solvent.

Paint and coating removal products with methylene chloride will only be available to commercial users who are trained and certified to show they can use the chemical so that it doesn't present unreasonable risks, the agency told Bloomberg Environment in a June 6 email.

While some businesses supported training, most comments on the agency's training program, which were due May 28, rejected the training strategy and supported the agency's originally proposed commercial ban.

83 Deaths

"No one should be poisoned at work—EPA needs to follow the science and move forward with a commercial ban," said Veena Singla, a researcher at the University of California, San Francisco.

Singla pointed to recent research she and other scientists displayed at the American College of Medical Toxicology meeting in April and included in comments submitted to the EPA. Eighty-three people died from methylene chloride exposure between 1980 to 2018, according to that research.

Most of those deaths, 87%, occurred on the job.

"Specifically, paint removers have been responsible for the most fatalities, 63%, of all methylene chloride product types," the researchers said.

The Toxic Substances Control Act requires the agency to protect the public—including highly exposed individuals such as workers—from unreasonable risks that chemicals can pose, Earthjustice and other groups said in comments they submitted to EPA about its training proposal.

Alternatives 'Totally Ineffective'

Others, however, said the strippers are needed and supported training.

Businesses must use strippers made with methylene chloride because paints and coatings have improved so much over the past 50 years that alternative formulations—ones without the solvent—are often "totally ineffective," Benco Sales Inc., an industrial stripper manufacturer, told the EPA.

Banning methylene chloride strippers "would greatly reduce recyclability of durable products that are able to be refinished and reused, and would adversely affect small businesses," the company said.

The Halogenated Solvents Industry Alliance Inc. supports the agency's ban on consumer sales of methylene-based strippers and its idea to limit access to professional and commercial users who have been trained to use the products responsibly, said Faye Gaul, the alliance's executive director.

A methylene chloride worker-training program that the U.K.'s Health and Safety Executive (HSE) developed could be a template for what the EPA could use, the alliance said.

U.K. Training Program

That program teaches workers about methylene chloride's health risks, and how ensuring adequate ventilation or other actions can reduce risks, Dave Arden, from HSE's Chemicals Regulation Division, said by email.

Workers also learn about available substitutes and non-chemical means to remove coatings, which can be less hazardous, he said. Only professional users who are in possession of an HSE certificate of competence can legally purchase and use methylene chloride-based paint strippers, he said.

The U.K. agency doesn't have data on the effectiveness of its training program, Arden said.

But the Environmental Defense Fund, which backs a commercial ban, told the EPA that the U.K.'s program isn't effective.

As evidence, it cited a criminal enforcement case HSE announced in January. The director of a U.K. company, Abel Ltd., was sentenced to 10 months in prison for selling methylene chloride paint strippers online without ensuring the purchasers were certified

HSE didn't immediately reply to a request to clarify whether that incident showed the program wasn't working or showed it was, because the company director was sent to jail.

Thirty European countries have banned methylene chloride paint strippers, and their workers are using alternatives, the Environmental Defense Fund said.

Burns, Coma, Cancer, Death

Exposure to short-term, high concentrations of methylene chloride can cause slowed reaction times, impaired gait, coma, fluid buildup in the lungs, skin blistering or burns, seizures, and death, according to the Centers for Disease Control and Prevention

Chronic exposure is "reasonably anticipated" to cause cancer, according to the Department of Health and Human Services.

The consumer ban the EPA issued was the first TSCA regulation prohibiting some uses of a chemical that the agency had issued since 1991, when the U.S. Court of Appeals for the Fifth Circuit in *Corrosion Proof Fittings v. EPA* overturned the agency's 1989 rulemaking that would have banned multiple uses of asbestos.

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Bloomberg Environment

More Workers May Die as EPA Works on New Plan for Solvent Ban

<https://news.bloombergenvironment.com/environment-and-energy/more-workers-may-die-as-epa-works-on-new-plan-for-solvent-ban>

Susan Bruninga

More workers may die using a toxic paint stripper while the EPA comes up with a plan to protect them, advocates, researchers, and occupational physicians say, Pat Rizzuto reports.

The Environmental Protection Agency banned the sale and use of the industrial solvent and paint stripper methylene chloride for consumers, but not workplace users, after proposing to include most industrial uses as well. Three workers have died from exposure since 2017, and research shows an estimated 83 people have died from it in the last 40 years.

The agency is considering developing a training, certification, and limited access program, modeled on one in the U.K., for commercial users—small businesses and other groups have said they rely on the solvent for various applications. Methylene chloride strippers are more effective on paints and coatings than non-solvent alternatives, advocates for the chemical's continued availability say.

Ohio May Zap Renewables to Prop Up Old Nuke Plants

The Buckeye State is considering legislation that would bring an unprecedented rollback of renewable energy and efficiency programs and give taxpayer support to two struggling FirstEnergy Solutions plants along Lake Erie.

Supporters say the plan helps the aging plants, which are responsible for 90% of Ohio's carbon-free power, while critics say lawmakers need to start thinking further ahead and work to boost renewable energy.

State Rep. Shane Wilkin (R) says eliminating Ohio's clean energy and efficiency mandates is a "big win" because the state gets to support the nuclear plants while lowering bills at the same time. The Ohio Consumers' Counsel argues the state's energy efficiency subsidies save customers more than \$600 million annually.

What Else We're Watching

The House Rules Committee is going to meet late today to begin hammering out amendments and plan for H.R. 2740, the “minibus” that would fund several agencies, including appropriations for energy and water development. Among the hundreds of amendments are those to prevent funds from being used to weaken President Trump’s executive order (E.O. 13868) on promoting energy infrastructure and economic growth, to facilitate U.S. withdrawal from the Paris climate agreement, and to prevent money for the Green Climate Fund, which helps less developed countries with their climate initiatives.

Interior Secretary David Bernhardt gives the keynote address at the Western Governors Association conference in Vail, Colo.

Insights

Marine Litter Problem is Solvable With a Little Help

Roughly 8 million metric tons of plastic waste enters our oceans each year. Better management of waste on land, new technologies, and new financing mechanisms are among the actions needed to stem the tide of plastic littering our oceans, Ryan MacFarlane, coordinator of the Asia-Pacific Economic Cooperation Virtual Working Group on Marine Debris, writes.

Legal Spotlight: New Hire Gives Bailey & Glasser’s Defense Practice a Boost

Brian R. Swiger made a name for himself as a defense attorney, arguing high-stakes cases on behalf of electric utilities, oil and gas companies, and other businesses in the industry.

Now, as a brand-new partner at Bailey & Glasser LLP’s Charleston, W.Va., office, he plans to grow the firm’s already successful defense practice. Swiger said the firm’s defense strengths are often overlooked by the public in favor of their “almost unprecedented success” in plaintiff work

“What they don’t realize is the equally remarkable results [Bailey & Glasser has] attained in the defense area and I just basically want to expand that into oil and gas, into electric, into some compressed gas, other industries that they’ve not traditionally been involved in,” he told Bloomberg Environment.

Ben Bailey, one of the firm’s founding partners, said in a statement that “Brian will help Bailey & Glasser expand its work in the oil and gas industry and among other energy producers. His portfolio, years of experience, and proven track record of success will enhance our litigation capabilities for these important clients.”

But with Swiger in this new role, the opportunities for advancement go both ways. Though traditionally a defense lawyer, Swiger hopes to start contributing to Bailey & Glasser’s plaintiff work, too.

“I’ve already been contacted by some energy companies and some large contracting companies that would like to utilize me to pursue claims that they have against others in their current industries,” Swiger said.

In his defense work, Swiger said his favorite cases have been “bet-the-company” litigation, where so much can be at stake. He said this same mentality makes plaintiff work interesting to him.

“A lot of the plaintiff work is on a blended rate to where a portion of your work is based on an hourly rate and the remainder is based on the contingency so it’s exciting to have a stake in the case, so to speak, from a financial standpoint,” he said.

Swiger said a friend had been telling him for over two years that he should join Bailey & Glasser.

“I’m convinced after just one week that that friend was right,” Swiger told Bloomberg Environment. — Maya Goldman

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Expert Focus: US states outpace EPA on PFAS firefighting foam laws

By Charles Denton 06/10/19

Charlie Denton, an environmental and toxic tort litigation partner at Barnes & Thornburg LLP, along with partners Tammy Helminski and Jeff Longworth, examine how states including Georgia, Michigan and Minnesota are pushing ahead with legislation while the EPA muddles through the federal bureaucracy.

There is no dispute that firefighting foam containing per- and polyfluoroalkyl substances (PFAS) is very effective at extinguishing flammable liquid fires. This fire suppressant material is also known as aqueous film-forming foam (AFFF).

Although highly effective for fighting flammable liquid fires (like jet fuel), environmental, health and safety concerns have prompted federal and state agencies and legislatures to consider regulating PFAS-containing firefighting foams. Whether and how to regulate these firefighting foams containing PFAS chemicals is a hotly debated topic.

At the federal level, the EPA issued its PFAS action plan on 14 February to evaluate whether and how to regulate PFAS compounds under various federal environmental programmes (including TSCA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Clean Water Act [CWA]), but the primary EPA focus is on the environmental and public health concerns when PFAS are released into the environment (eg, safe drinking water limits for PFAS compounds, soil and groundwater remedial criteria, etc.)

While the EPA's plan may help to fill in some of the regulatory landscape regarding PFAS, the agency also leaves states and regulated parties a bit in the dark regarding immediate regulatory tools to address PFAS contamination.

Hence, these PFAS criteria and cleanup issues will continue to be addressed on a site-by-site and state-by-state basis.

Fearing the EPA's bureaucratic challenges will delay comprehensively addressing PFAS concerns, states have stepped into this regulatory void, including ongoing PFAS usage in firefighting.

As could be expected, these state legislative approaches have varied as to what activities and materials they would prohibit or regulate, how and over what timeframe they would be implemented, and in other potentially significant ways. This article summarises a few of the representative state legislative enactments.

Georgia

In the final hours of the 2019 Georgia legislative session, House Bill 458 was passed overwhelmingly (159 to 1) to regulate firefighting foam by amending the Georgia Fire Code.

On and after 1 January 2020, the discharge or other use of firefighting foam that contains PFAS chemicals is prohibited. 'PFAS chemicals' is defined to include those fluorinated organic chemicals that contain at least one fully fluorinated carbon atom. This is a very broad and comprehensive definition of the regulated PFAS compounds.

The Georgia law also focuses on class B firefighting foam, which is used to extinguish combustible and flammable liquid fuel fires, like those that might occur at airports, military bases, rail transportation, refineries and other industrial facilities. The Georgia Fire Code, as amended, will now prohibit any fire department or other state or local entity from discharging or otherwise using class B firefighting foam that contains PFAS chemicals, with two exceptions:

use of such firefighting foams in response to an emergency fire occurrence; or

for training or testing purposes at an engineered facility built to contain chemical releases and environmental impacts.

Virginia

Virginia passed a law similar to Georgia's legislation, the Responsible Firefighting Foam Management Act, that restricts the use of PFAS firefighting foams for training and testing, but allows for their continued sale and use during real-world fire emergencies.

Arizona

Recognising possible preemption and FAA regulatory considerations, Arizona's similar law prohibiting discharge or other testing or training uses of PFAS-containing class B firefighting foam carves out usage "required by law or federal regulation".

Colorado

The Colorado General Assembly passed legislation on 15 May that is somewhat similar to Georgia and Virginia, but also seemingly more complicated. The Colorado Firefighting Foams Control Act prohibits the use of class B firefighting foam that contains PFAS for training purposes, and violations may result in imposition of a civil penalty. The Act also limits the sale of PFAS firefighting foam, and requires manufacturers to notify their customers of this law.

The Colorado approach also addresses personal protective equipment (PPE) that may contain PFAS compounds, most likely for firefighters, by requiring PPE manufacturers to disclose whether their product contains PFAS compounds. The Colorado Department of Public Health & Environmental (DPHE) must also survey fire departments to determine their inventory of PFAS firefighting foam and information on usage and disposal.

Minnesota

Minnesota, where there have been significant PFAS contamination sites arising from chemical manufacturing and airport activities, enacted a multi-faceted law on 22 May. Similar to other states, the law prohibits class B firefighting foam containing PFAS chemicals for testing or training, unless required by federal law, but excludes from this ban use of AFFF in emergency firefighting and fire prevention activities.

The Minnesota law also requires that any release of class B firefighting foam containing PFAS chemicals must be reported to the State Fire Reporting System within 24 hours.

'Minnesota went beyond the firefighting foam subject matter and prohibited PFAS-containing flame-retardants in residential products'

The Minnesota legislature went beyond the firefighting foam subject matter and prohibited PFAS-containing flame-retardants in residential products, like furniture, mattresses, textiles and window coverings.

It also addresses products that contain organohalogen flame retardant compounds as a group, rather than specific chemical formulations, which could be changed or modified to circumvent their regulation. One of the expressed concerns was that in a fire event those flame-retardant products may release PFAS compounds and expose firefighters and residents.

Michigan

The Michigan legislature is considering (but has not yet enacted) three related proposals for regulation of class B firefighting foams containing PFAS chemicals. The Michigan legislation would include similar approaches to Georgia and other states regarding AFFF restrictions on training and testing; however, the Michigan laws would go beyond those other states to address firefighter health and safety and disposal of legacy AFFF.

Michigan OSHA (MIOSHA) would be required to promulgate rules regarding best practices for storage, handling and use of AFFF, as well as decontamination of firefighters' gear and other best health practices. Concerns have been expressed about the open-ended aspects of this MIOSHA administrative rulemaking mandate.

The Michigan legislative proposal would also require reporting of AFFF usage so that the Michigan Department of Environment, Great Lakes & Energy (EGLE) can ensure appropriate cleanup. Another unique aspect of the Michigan law would authorise a state programme for collection of legacy AFFF products for proper management and disposal.

Wisconsin

Republican lawmakers in Wisconsin have proposed legislation to ban class B foams used on flammable liquid fires, with two exceptions: in emergencies; or in tests with appropriate containment, treatment and disposal measures. The state Department of Natural Resources (DNR) would be tasked with creating these measures. If passed and signed into law, the restrictions would take effect on the first day of the seventh month after its passage

On the Democratic side, Wisconsin LRB-2297/2 was introduced on 24 May to comprehensively regulate environmental, health and safety aspects of PFAS compounds (including but not necessarily limited to PFOA and PFOS, as well as PFHxS, PFNA, PFBS and PFHpA). Funds would be dedicated to, among other things, conducting a survey of local and state emergency responders regarding their use of firefighting foam containing PFAS compounds. WDNR could also require persons who possess or control PFAS to provide proof of financial responsibility for remediation and long-term care to address potential remediation caused by PFAS contamination.

Kentucky

Kentucky Governor Matt Bevin approved bill SB 104 on 22 March that will ban firefighting foams containing intentionally added PFAS in products used for training or testing purposes, with some exceptions from 15 July 2020. Their continued use in emergency situations will not be affected.

Federal action, unanswered questions

Although the EPA's PFAS action plan outlines the steps the EPA is taking toward various regulatory endpoints and summarises the agency's concerns and challenges, it does not provide immediate regulatory answers or deadlines for final EPA regulatory actions.

'When the EPA ultimately acts, what will be the effect on these previously enacted state laws?'

The fractured and uncertain regulatory environment of different PFAS standards in different states will continue. When the EPA ultimately acts, what will be the effect on these previously enacted state laws? What if the state has a law prohibiting enactment of requirements "stricter" than federal requirements?

There are many questions with which regulators, the regulated community, legislators and probably judges will need to grapple with and resolve over the coming years. Perhaps Congress will move to preempt state laws; at least 30 bills have been introduced in the US Senate and House of Representatives, many with bipartisan support.

While PFAS-containing firefighting foam is but one aspect of the PFAS regulatory discussion, it is a topic with many real-world implications for protection of public health and safety and the environment. As these variable state laws summarised above indicate, striking a balance between and among the clear need for effective response to fire emergencies while recognising worker protections and public health risks from unacceptable exposures can be challenging.

This is especially so as the toxicological science about PFAS risks continues to evolve, and, unfortunately, trails behind not only our ability to detect the various PFAS chemicals but also our ability to make sense of what we are measuring and regulating by these various initiatives

What are PFAS?

PFAS are man-made, emerging contaminants that have been in the news with increasing frequency. While PFAS compounds have been manufactured for more than half a century, it is only in the past 15-20 years that some of the compounds have been linked to various health concerns.

PFAS refers to a family of chemicals, much like polychlorinated biphenyls (PCBs). While there are thousands of these compounds, two PFAS compounds in particular, PFOS and PFOA, have been the ones subject to the most regulatory discussions. More recent formulations, like PFBS or those referred to as GenX, also are alleged to pose environmental and human health concerns.

The Federal Aviation Administration (FAA) requires that commercial US airports use – and even train with – firefighting foam that meets the Department of Defense military specification, (MilSpec), which specifically includes PFAS.

AFFF used by the US military must meet the requirements set forth in Military Specification MIL-F-24385F, which is under the control of the Naval Sea Systems Command, Code 05P9. The Naval Research Laboratory is the designated institution for certification evaluation for the Department of Defense (DoD) AFFF Qualifying Products List (QPL).

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Plastics

The Hill

<https://thehill.com/policy/international/447716-trudeau-announces-canadian-ban-of-single-use-plastics-as-early-as-2021>

Trudeau announces Canadian ban of single-use plastics as early as 2021

By Jessica Campisi 06/10/19 11:13AM

Canada will ban single-use plastics as early as 2021, Prime Minister Justin Trudeau announced on Monday.

While a science-based review will determine what items are included in the ban, water bottles, plastic bags and straws are some of the items that are up for debate, Trudeau said at the Gault Nature Reserve near Montreal.

Fast food containers, cotton swabs, drink stirrers and balloon sticks could also be banned, CBC News reports.

“Canadians are tired of seeing our beaches, parks, streets, and shorelines littered with plastic waste,” Trudeau wrote on Twitter after the announcement.

Trudeau said Canada is taking notes from the European Union, which voted in March to ban single-use plastics starting by 2021, the Associated Press reports. The Canadian ban is reportedly part of a larger initiative to combat pollution, CBC reports.

As of April, plastic bags were banned in at least 32 countries and in three U.S. states. Canadians reportedly throw away more than 34 million plastic bags daily, according to Environment and Climate Change Canada.

“Many other countries are doing that and Canada will be one of them,” Trudeau said. “This is a big step but we know can do this for 2021.”

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Climate Change

Climatewire

Wheeler targets 'worst-case' climate scenario

<https://www.eenews.net/climatewire/stories/1060533923/search?keyword=EPA>

Jean Chemnick, E&E News reporter

EPA Administrator Andrew Wheeler says the use of an inappropriately pessimistic climate modeling tool is driving bad press around climate change, and he's pledged to halt its use.

While he was still acting EPA chief, Wheeler blamed overly dire assumptions for the National Climate Assessment, released by the Trump administration last Black Friday — a launch that seemed calculated to bury the congressionally mandated report, which highlighted the findings of experts at 13 federal agencies that harmful man-made climate change is underway and growing worse.

And Wheeler used a summit last month in Metz, France, with ministers from six principal foreign allies to promise to "reexamine comprehensive modeling that best reflects the actual state of climate science."

Then, last Monday at a National Press Club briefing, Wheeler lamented that most press coverage of the NCA focused on what he called "the worst-case scenario."

"I do think we should take a more realistic look at the worst-case scenarios ... all the scenarios ... going forward," he said.

The "worst-case scenario" Wheeler seems concerned about is something called Representative Concentration Pathway, or RCP, 8.5 — a scenario long used by the U.N. Intergovernmental Panel on Climate Change, federal agencies responsible for the NCA, and the climate modeling community writ large to represent the upper extreme of greenhouse gas concentrations that could exist in the world's atmosphere by the end of this century.

RCP 8.5 assumes the world will curb fossil fuel use by only about 20% over the next 80 years while experiencing relatively low income growth and very high growth in population and global energy demand.

Developed by researchers in Austria in 2007, RCP 8.5 is used by the IPCC and other entities together with three other baseline scenarios that incorporate more optimistic assumptions for global economic development, technology, trade and other factors that could inform future atmospheric greenhouse gas concentrations and, by extension, warming. The IPCC and NCA don't rely on one scenario for any one report but show a range. The scenarios don't seek to predict future climate policies but instead focus on longer-term trends.

"We're not fortune tellers; we're scientists," said Richard Moss, a senior scientist doing climate modeling work at the Pacific Northwest National Laboratory's Joint Global Change Research Institute and a participant in the NCA.

The four scenarios don't translate precisely to specific degrees of temperature rise — experts note uncertainty about feedback loops and other variables. But an RCP 8.5 pathway could usher in a catastrophic level of warming equal to about 4 or 5 degrees Celsius above preindustrial levels. It's those findings that triggered some of the headlines Wheeler objected to last week.

EPA seems to be building a case for exiling this "worst-case scenario" from future climate reports by the U.S. government. Sir Robert Watson, a British chemist who briefed Wheeler and his foreign counterparts at Metz last month on the U.N. species extinction report he'd spearheaded, said the EPA administrator singled out RCP 8.5 for criticism in his remarks there, calling the scenario "extreme."

EPA did not respond to an E&E News query about whether the "worst-case scenario" Wheeler referenced at the press club was RCP 8.5.

But spokesman James Hewitt asserted in a statement that "the previous use of inaccurate modeling that focuses on worst-case emission scenarios, that does not reflect real-world conditions, needs to be thoroughly re-examined and tested if such information is going to serve as the scientific foundation of nationwide decision-making now and in the future."

"The fundamental problem with worst-case emission scenarios is that they are based on the flawed supposition that the significantly positive trends in global poverty reduction, economic improvement, and demographics could actually slide backwards," he said.

But experts in climate modeling, including some like Moss, who participated in the NCA, say that while RCP 8.5 represents the more pessimistic end of the report's range, it isn't actually extreme. It represents about the 90th percentile of what scientists think could happen this century in terms of greenhouse gas concentrations, which means there's a 10% chance it's an underestimate.

And with Brazil, Australia and the United States rolling back climate policies and emissions ticking upward, it's currently more in line with global emissions than the more-optimistic baseline scenarios.

"We are right on 8.5 right now," said Don Wuebbles, a professor of atmospheric science at the University of Illinois, Urbana-Champaign, who participated in the NCA. "We are on emissions that are higher than any of the other scenarios right now."

The Global Change Research Act of 1990, which was signed by President George H.W. Bush and mandated the periodic release of the NCA, was intended to furnish Congress with information to aid with planning, Moss said, not reassurance.

"The whole point of something like this is to prepare for the future, and I've never heard of effective risk analysis that picks a low scenario and says, 'Let's work from that,'" he said. "This is facetious, but if the planners of D-Day had said, 'Let's pick a scenario where the Germans see us coming and lay down their weapons and run away, and let's plan for that,' that's not exactly going to get us on the beach."

Last week, Wheeler said that the IPCC was "moving away" from using RCP 8.5 in its assessments, but EPA did not respond to E&E News requests to elaborate.

Last year's landmark IPCC report referenced RCP 8.5, but the purpose of that special assessment was to show the difference between a temperature rise of 1.5 C and 2 C. Since RCP 8.5 correlates to at least twice 2 C, it played a less central role in the analysis than did more optimistic scenarios.

Wheeler also blamed the "Obama White House" for setting the parameters of the NCA, including what he called its "focus" on "the worst-case scenario."

"I thought that was political interference by the Obama White House in that process," he told his press club audience.

When asked, EPA's press office supplied a May 2015 memo from the Subcommittee on Global Change Research of the National Science and Technology Council's Committee on Environment, which EPA said reflected Obama White House political policies.

But Wuebbles said it reflected consensus among experts at the federal agencies and tracked with the IPCC and previous NCAs. The memo doesn't set RCP 8.5 as the only scenario to be used — it sets a range of RCP 4.5, a moderate scenario, to RCP 8.5, with some analysis of other baseline scenarios.

Peter Frumhoff, director of science and policy for the Union of Concerned Scientists, said it was ironic that Wheeler was advocating the use of assumptions that track with a quick global shift away from fossil fuels even as he presides over efforts to keep that shift from occurring.

"Mr. Wheeler's and this administration's policies to expand fossil fuels use is only increasing the prospect that we're going to continue to hug that scenario for some time to come until we come out our senses," he said. "But there's no evidence in the trajectory that we're experiencing today that that bending is taking place."

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Climatewire

Legal defeats pile up for Trump rollbacks — report

Jennifer Hijazi, E&E News reporter

The Trump administration has failed to successfully defend any climate-related regulatory rollbacks before the courts during the president's time in office thus far, according to a new report from the Sabin Center for Climate Change Law at Columbia University

The report reviewed 159 cases filed between 2017 and 2018 "that raise climate change as an issue of fact or law.

They were culled from a database of more than 200 litigation matters tracked through a partnership between the Sabin Center and law firm Arnold & Porter LLP.

The paper, authored by climate law fellow Dena Adler, sorted the lawsuits into five categories: four involving "pro" cases, in which a win for the parties that brought the suit would advance climate action; and one category of "con" cases, in which a win would undermine climate action.

The "pro" cases outweigh the "cons" 81% to 19%

The cases' subjects ranged from fossil fuel infrastructure to land and wildlife issues, though the volume of cases in each area isn't necessarily a read on whether they had a greater impact on policy over others.

Transportation and power plant emissions, for example, made up a smaller category but could represent a more substantial impact on policy.

In 2017 and 2018, challengers filed 12 cases challenging Trump administration efforts to delay or roll back climate protections. Five of those resulted in a ruling against Trump, and five pressured the government to end the delay in question and were then dismissed or allowed to lapse. The rest are pending.

The courts have also halted some of the Trump administration's efforts to increase fossil fuel development without adequate environmental review.

Courts ordered additional analysis, for example, after the Interior Department lifted an Obama-era moratorium on coal leasing on public lands and when the State Department issued a key permit for the Keystone XL pipeline.

The report says those decisions "uphold precedent that the Trump Administration cannot shirk statutory obligations" when making policy changes or conducting environmental reviews for fossil fuel development.

Meanwhile, cases promoting transparency and enforcing climate protections increased in 2018 — at least in part, the report says, in response "to underlying opportunities to challenge current and previous administration policies."

Many of those transparency cases brought to light corruption and unethical behavior on the part of government officials, the report says. In one such case brought by the Sierra Club, Freedom of Information Act requests unearthed "24,000 pages of EPA emails and call logs that it reported to reveal a 'culture of corruption' in Pruitt's EPA."

"Direct defense" cases, with parties seeking to defend climate-protective policies, made up about 8% of climate litigation for 2018, the report found

But according to the report, that number is "indicative of the broader suite of opportunities to challenge the Trump Administration's climate policy — or lack thereof."

Nongovernmental organizations were most frequently the plaintiffs or petitioners in the "pro" cases, at 77%, frequently challenging EPA and the Interior Department.

Industry actors brought 16% of total cases but made up the vast majority of the "con" category — those seeking to weaken climate protections — at 70%

The report concludes that attempts to undermine climate regulation remain "constrained by the court through vigilant litigation.

"As climate change cases develop, the courts will continue to be an important arena for enforcing administrative, statutory, and other legal obligations," the Sabin Center said in a statement about the report.

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Politico Pro

Senate Democrats push Chamber to defend climate science

<https://subscriber.politicopro.com/article/2019/06/senate-democrats-push-chamber-to-defend-climate-science-3388325>

BY ANTHONY ADRAGNA

Fourteen Senate Democrats are calling on the U.S. Chamber of Commerce to publicly ask the Trump administration not to blunt the conclusions of the National Climate Assessment and to affirm its support for EPA's endangerment finding on climate change.

The letter released today comes after a New York Times report that the administration is attempting to limit U.S. Geological Survey projections of climate change impacts to those through 2040. That would represent a significant departure from past practices of projecting those impacts through the end of the century.

The Democrats, led by Minority Leader Chuck Schumer and Sen. Sheldon Whitehouse (R.I.), also want the Chamber to disavow its prior legal challenges to EPA's endangerment finding, which provides the legal underpinning for regulating greenhouse gases.

"If the Chamber is serious about climate change and protecting climate science, we urge that it come out strongly against any efforts to limit science behind the National Climate Assessment and come out strongly in support of the endangerment finding," the senators wrote. "It is imperative that climate science remain free of political interference."

Three 2020 presidential candidates signed the letter: Sens. Amy Klobuchar (Minn.), Elizabeth Warren (Mass.) and Kamala Harris (Calif.)

In addition, the Democrats released a late-March response from the Chamber declining to support a bare-bones resolution, S.J. Res. 9 (116), calling for immediate congressional action on climate change. The Chamber said the resolution "does not offer any concrete steps" and that lawmakers' time "would be better spent considering meaningful policy initiatives," outlining a number of bills it supports.

The Chamber was not immediately available to comment on the letter.

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Science Advisory

The Hill

Battle over science roils EPA

<https://thehill.com/policy/energy-environment/447520-battle-over-science-roils-epa>

BY REBECCA BEITSCH

Environmental Protection Agency is battling its own board of science advisers over its controversial plan to dismiss certain types of scientific research from consideration when issuing rules.

A meeting this week between the agency and some of the nation's top scientists highlighted the growing rift between the EPA and the scientific community, with members of the Science Advisory Board (SAB) pushing back on the administration's efforts to bar consideration of studies that don't make their underlying data public.

Critics say the move would omit important research from EPA consideration and lead to a dramatic rollback of existing regulations

The SAB, a team of more than 40 of the nation's top scientists, have been asking to weigh in on the controversial proposal since it was unveiled more than a year ago.

On Wednesday, it said it would do so —despite a request from the agency to review a narrow portion of the rule.

There's mistrust between the scientific community and EPA's leaders in the Trump administration.

Then-EPA Administrator Scott Pruitt said the proposal, called Strengthening Transparency in Regulatory Science, would battle "secret science" when it was first introduced. That spurred scientists to call the proposal "censored science.

EPA Administrator Andrew Wheeler on Wednesday appeared before the board, vowing to improve the relationship between it and the agency.

"I'll be the first to admit that we have not utilized you in ways that we should. We can and we will do better," Wheeler said.

But many in the science and environmental community walked away from the meeting disheartened at what they see is the agency's plan to amplify pet policies and the voices of industry over those from scientists.

"I would say the way that the meeting proceeded kind of contradicted a lot of Administrator Wheeler's statement at the beginning of the meeting," said Genna Reed, lead science and policy analyst with the Union of Concerned Scientists. "Their discussion showed that EPA has not really involved the Science Advisory Board and gotten their advice on several of the deregulatory actions they've proposed."

Scientists have had a number of concerns over how the Trump administration values science, but things really came to a head when the EPA announced the science transparency rule without first consulting the SAB.

The group didn't find out about the rule until it was publicly announced — a sign, scientists and environmentalists say, the EPA was not interested in meaningful feedback

The proposal has since proven to be one of the most controversial EPA has written, prompting 600,000 comments. Critics say the rule will exclude some of the most important research from consideration simply because it does not rely on data that can be shared publicly.

The board sent a letter in May of 2018 with a number of questions and asking to weigh in on the rule but it took almost 11 months before the agency responded in April of this year.

Wheeler apologized for the delay Wednesday, saying it was the result of the agency taking time to rethink how it wants to work with the board going forward

He asked the board to give its thoughts on how the agency can deal with studies that don't make their data public because it includes confidential business information or personally identifiable information.

The board bucked that request and instead voted to review the proposal in its entirety.

"I'm wondering if any of the comments the EPA received gave you pause about proceeding with that rule?" asked Barbara Morrissey, chair of a separate EPA panel, the Children's Health Protection Advisory Committee.

"I agree the confidentiality issue is an important and a thorny one so I'm glad that you referred that to us, but I'm concerned about whether the best available science can be ignored because it can't be replicated for obvious reasons," she said, nodding to studies of people who were exposed to harmful chemicals.

Watchers of the board were surprised by the vote given how the makeup of the board has changed under the Trump administration.

Fears that the EPA planned to sideline scientists started under Pruitt when he announced that scientists who receive grants from the EPA would not be allowed to serve on the board—a move that knocked out about half of the members sitting on the Science Advisory Board

Reed with the Union of Concerned Scientists said there are pretty much two types of grants available to scientists—those from the EPA and those from industry. She didn't understand why getting an EPA grant would present a conflict of interest when an industry grant wouldn't

"People who received these no strings attached grants and are experts on some of the most pressing environmental issues are kept from serving on the board," she said. "It's clearly a political maneuver to change the composition of these advisory committees."

Twenty six of the 45 current board members were appointed during the Trump Administration, a huge amount of turnover in a board that otherwise loses under a fifth of its members each year due to term limits.

"I was pleasantly surprised," Chris Zarba, who served as the former staff coordinators for SAB until last year, said of the vote to review the entire science transparency rule. It's not that the Trump administration picks aren't qualified, he said, but a good board needs diversity.

"Think of it this way. If I was picking a world class football team, and I only picked people that were world class, top-ranked players — if all those people I picked were field goal kickers, I'd never win a game," he said. "It's hard to question any single member on the board, and by law the administrator can pick anyone they want and any member that is qualified, but the bigger question is: is the entire team well equipped and accurately representing mainstream science? I think we will see how it turns out...There are certainly picks I wouldn't have recommended to the administrator."

Robert Phalen is one Trump administration pick that has been questioned by scientists for views of air pollution that are out of line with most mainstream scientists. The University of California Irvine professor told the American Association for the Advancement of Science that "modern air is a little too clean for optimum health."

Phalen was one of the few at the meeting to vote against reviewing the science transparency rule in its entirety.

"I can see and respect both sides of the debate on transparency," he told The Hill in an email. "We need to know if the research used for regulations is free of serious errors, and that requires other scientists having access to the data. On the other hand if the data were widely available it could be improperly used, such as for disclosing private information. So both sides have validity."

Wheeler said the agency will move forward with something, assuring the board that the administrator will always have the power to give an exemption to an important study, even if it can't disclose all its data.

"I do fundamentally believe the more information we put out to the public as far as what is the basis for our regulatory decisions, the more sound our decision will be and the more easily understood and accepted by the public our decision will be because they see all the science we are using," he told the board.

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The Washington Post

https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/06/10/the-energy-202-oil-and-gas-lobbyists-pressed-for-exemption-from-trump-s-mexico-tariffs/5cfd42ce1ad2e5122b87c566/?utm_term=.8080a90ed353

The Energy 202: Oil and gas lobbyists pressed for exemption from Trump's Mexico tariffs

By Dino Grandoni 06/10/2019

Oil and natural gas executives are breathing a sigh of relief after the United States and Mexico reached a deal to avoid tariffs threatening to constrict a burgeoning flow of crude oil and refined fuels between the two countries.

But the agreement is hardly going to be the end of trade tensions. Trump has shown he is willing to disrupt relations with Mexico and China, two of the largest U.S. trading partners, to a degree that sends shivers through the spines of fellow Republicans on Capitol Hill, as well as many of corporate executives who normally cheer the administration for easing regulations on businesses.

And Trump's unpredictable behavior could still affect ratification by Congress of a renegotiated North American free-trade deal known as USMCA.

Frustrated by the flow of migrants at the southern border, Trump in a series of tweets late last month threatened tariffs on all Mexican imports, which would have started at 5 percent and could have risen to 25 percent

That tweet sent representatives for refineries along the Gulf of Mexico into a lobbying overdrive.

"I feel like I've aged 20 years since last Thursday," said Joshua Zive, a counselor at the law and lobbying firm Bracewell, which represents refiners and other energy companies.

Their ask: that the heavy crude oil making its way to Gulf refineries receive an exemption under the threatened tariffs. Mexico is the third largest supplier of crude oil to the United States behind Canada and Saudi Arabia, exporting 665,000 barrels per day on average in 2018, according to the U.S. Energy Information Administration.

Refinery representatives pressed their case, according to their offices, in a flurry of phone calls to officials in the White House and at various other offices, including the departments of Commerce, Energy, State and Treasury, and the Office of the U.S. Trade Representative — anyone who would listen.

It turned out they could stand down, for now. On Friday, the leaders of the two nations announced a deal in which the Mexican government will seek to curb migration at the southern border in exchange for averting the tariffs.

The tariffs would have arrived at a particularly bad time for Gulf refining companies using Mexican crude, which include Valero, Chevron, Shell and Premcor, with the market for heavy crude tight in recent months because of political turmoil in Venezuela and renewed sanctions on Iran, sapping oil from international supplies. The market would have also been squeezed right before the peak of the summer driving season.

Retaliatory measures from Mexico could have cut even deeper, because energy is one of the few economic sectors in which the United States has a trade surplus with Mexico — a fact oil lobbyists tried to emphasize with the Trump administration.

"Right now on the trade side, we're winning," said Chet Thompson, chief executive of the American Fuel and Petrochemical Manufacturers, a trade association representing U.S. refineries and petrochemical manufacturers. "It's a substantial surplus.

What Mexico could have targeted was the \$30.5 billion in gasoline, jet fuel and other petroleum products the United States sold to Mexico last year, compared with the \$15.8 billion of mainly crude oil and natural gas Mexico traded north.

"Where could Mexico cause the most pain if they wanted to? Ag, and oil and gas," said Christopher Guith, acting president of the U.S. Chamber of Commerce's Global Energy Institute

But the longer-term goal of the oil and gas business — one complicated by this most recent trade impasse — is the ratification of the new trilateral trade agreement between Mexico, Canada and the United States.

Oil and gas companies convinced the Trump administration to carry over a number of protections for investments in Mexico from the North American Free Trade Agreement to the revised USMCA.

Energy companies have built up infrastructure in Mexico ever since it opened its borders to foreign drilling in 2013. Now, they are pressing Congress to ratify the treaty to protect those investments.

Over the weekend, Trump, too, pressed House Speaker Nancy Pelosi (D-Calif.) for not yet scheduling a vote on the new trade agreement over Democrats' concerns about labor and environmental provisions in it.

Donald J. Trump

@realDonaldTrump

Nervous Nancy Pelosi & the Democrat House are getting nothing done. Perhaps they could lead the way with the USMCA, the spectacular & very popular new Trade Deal that replaces NAFTA, the worst Trade Deal in the history of the U.S.A. Great for our Farmers, Manufacturers & Unions!

Pelosi fired back by accusing Trump of "recklessly threatening to impose tariffs on our close friend and neighbor to the south."

"Threats and temper tantrums are no way to negotiate foreign policy," she added in a statement.

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Legal/Superfund

Bloomberg Environment

SCOTUS to Consider ARCO Superfund Preemption Case

<https://news.bloombergenvironment.com/environment-and-energy/scotus-to-consider-arco-superfund-preemption-case>

By Peter Hayes

The U.S. Supreme Court will consider whether the Superfund law preempts common law restoration claims, the court announced June 10

The Montana Supreme Court ruled that private party claims may proceed under state law against Atlantic Richfield Co. for restoration damages.

ARCO argued that ruling would disrupt remedies thought to be long settled and undermine companies' abilities to work with EPA.

The case stems from contamination from a copper smelter operated by Anaconda Co., ARCO's predecessor, near the community of Opportunity, Mont.

The U.S. Environmental Protection Agency designated the area surrounding the smelter as a Superfund site, and ordered ARCO to conduct a cleanup

ARCO paid about \$400 million for the cleanup, and is responsible for executing the EPA's cleanup plan and monitoring its effectiveness

Landowners whose properties are part of the site then sued ARCO in Montana state court seeking restoration damages under state law and proposed their own cleanup plan, with more stringent standards than the EPA's, with a cost of about \$50 million

Williams & Connolly LLP, Arnold & Porter Kaye Scholer LLP, and Davis Graham & Stubbs LLP represent Atlantic Richfield. Morrison & Foerster LLP represents lead plaintiff Gregory A. Christian.

The case is Atlantic Richfield Co. v. Christian, U.S., No. 17-1498, 6/10/19.

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Reuters

<https://www.reuters.com/article/us-usa-court-superfund/u-s-supreme-court-to-hear-bp-units-dispute-over-montana-superfund-site-idUSKCN1TB1Q9>

U.S. Supreme Court to hear BP unit's dispute over Montana Superfund site

By Andrew Chung 06/10/19 9:49AM

WASHINGTON (Reuters) - The U.S. Supreme Court on Monday agreed to hear a bid by a unit of British oil major BP Plc to avoid a lawsuit by private landowners in Montana seeking to force the company to pay for a more extensive cleanup of a Superfund hazardous waste site than what federal environmental officials had ordered.

The justices took up Atlantic Richfield Co's appeal of a lower court ruling allowing a lawsuit by a group of property owners within the sprawling site of its former Anaconda copper smelter in western Montana to proceed to trial. Atlantic Richfield already has spent \$470 million on soil and ground water restoration at the site ordered by the U.S. Environmental Protection Agency.

The company, which is backed by industry groups including the U.S. Chamber of Commerce and the National Association of Manufacturers in the case, has said the lower court's decision could lead to thousands more lawsuits nationwide against companies and further complicate federally mandated improvements to contaminated land.

The Superfund program, started in 1980, is intended to identify contaminated sites and ensure that those responsible for the pollution pay for the hazardous waste cleanup. It has been criticized over the years for slow efforts.

The Anaconda smelter, near the small community of Opportunity, Montana, operated between 1884 and 1980 and provided much of the world's copper supply. It was designated a Superfund site in 1983 to reduce arsenic contamination in residential yards, pastures and ground water.

The landowners sued in state court to restore their properties to pre-smelter conditions. Atlantic Richfield said such state law claims were barred by the EPA's actions under the 1980 Superfund law, called the Comprehensive Environmental Response, Compensation and Liability Act.

The company also said the suit was prohibited under the U.S. Constitution's so-called Supremacy Clause, which holds that federal law generally trumps state law

In 2017, the Montana Supreme Court, the state's highest court, ruled against Atlantic Richfield, allowing the case to move forward. Appealing to the Supreme Court, Atlantic Richfield said that decision could undermine the already-complex Superfund regime and leave companies open to thousands more lawsuits. It also could be forced to redo its work at the Anaconda site, the company said.

“This is the very definition of madness,” the company said in a legal brief

President Donald Trump’s administration has said the Montana court improperly ruled in favor of the landowners but agreed that the case should proceed to trial before the justices hear it.

Also on Monday, the Supreme Court declined to hear an appeal by Canada’s Teck Resources Ltd of a lower federal court’s decision holding the company liable under the Superfund law for pollution that settled in Washington state from a smelter in British Columbia. The company said the law cannot be applied outside U.S. borders.

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Politico Pro

Supreme Court to settle Superfund liability dispute

<https://subscriber.politicopro.com/article/2019/06/supreme-court-to-settle-superfund-liability-dispute-3389138>

BY ALEX GUILLÉN

The Supreme Court today agreed to decide whether people who live near Superfund sites can sue property owners under state law in addition to any cleanup agreement reached with EPA under the Superfund law.

The case comes from the Montana Supreme Court, which ruled two years ago that residents could pursue further claims against Atlantic Richfield, the liable company that has so far spent \$470 million under a deal with EPA to clean up contamination from an old lead smelter site in Montana.

Now, around 100 residents are trying to force the company to conduct further remediation on their properties, beyond what EPA has required

The Montana court’s ruling is “simultaneously so wrong and so consequential,” Atlantic Richfield wrote in its petition last year, adding that “the decision threatens to force Atlantic Richfield to pay tens of millions of dollars to remove soil that EPA determined there was no reason to remove.”

In accepting the appeal, the high court bucked the Trump administration's suggestion that hearing the case would be premature at this stage, before a jury trial takes place in state courts. The Justice Department in April said that it believes the Montana Supreme Court erred in concluding that state law claims are not superseded by the federal Superfund law. But the administration also argued that procedural questions mean the U.S. Supreme Court should have allowed the state courts to hear the full case first.

The Obama administration in 2016 unsuccessfully made a similar argument about Superfund preemption during proceedings before the Montana Supreme Court.

The case is Atlantic Richfield v. Christian, 17-1498. Oral arguments likely will take place this fall or winter.

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Greenwire

Justices to decide major Superfund case

<https://www.eenews.net/greenwire/stories/1060540793/search?keyword=EPA>

Ellen M. Gilmer, E&E News reporter

The Supreme Court has another big environmental case on its docket, as the justices today agreed to review a Superfund fight that could affect cleanup efforts across the country.

The court will hear *Atlantic Richfield v. Christian*, a battle over an old copper processing site in Montana. At issue in the case is whether landowners can go to state court to seek money for restoration when EPA is already overseeing an effort under the Superfund law, officially known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Industry lawyers told the Supreme Court the case could be "one of the most consequential decisions interpreting CERCLA in years."

The Anaconda Smelter Superfund Site has been on EPA's National Priorities List since 1983. The soil, groundwater and some surface waters in the 300-square-mile area surrounding the old industrial site are laced with high concentrations of arsenic and other hazardous substances released during a century of copper smelting.

Neighbors filed suit in state court in 2008, seeking money from Atlantic Richfield Co., which acquired Anaconda Minerals Co. years ago, for restoration work beyond what EPA required in its cleanup plan. Specifically, the landowners wanted to reduce arsenic levels in their soil and groundwater far below the threshold EPA set. State courts allowed the case to move forward, and Atlantic Richfield asked the Supreme Court to intervene

"The state court's holding throws remediation efforts at Anaconda and other massive sites into chaos and opens the door for thousands of private individuals to select and impose their own remedies at CERCLA sites at a potential cost of many millions of dollars per site," lawyers for the BP PLC subsidiary told the high court last year

The landowners maintain the Superfund law preserves their right to bring claims under state common law. The Trump administration filed a brief in April saying it disagreed with the landowners but thought the court should nevertheless reject Atlantic Richfield's petition as premature (Greenwire, May 1).

The Supreme Court is expected to hear the case this fall. The outcome could either encourage more landowners to seek restoration damages outside the Superfund process or set clearer limits on landowners' legal options.

Harvard Law School professor Richard Lazarus said he was surprised by the Supreme Court's decision to take the case against the administration's recommendation

"That the U.S. Supreme Court nonetheless granted review is not good news for the respondents and strongly suggests that the minimum of four Justices who favored review are currently inclined to rule in favor of Atlantic Richfield," he said in an email to E&E News.

"It also suggest that petitioner's lawyers did an especially effective job of persuading the Court to grant review. Never easy in any case, but especially so in a CERCLA case, which none of the Justices are doing jumping jacks to hear," he said.

Still, Lazarus cautioned, the arguments on both sides are strong, and it's "far from clear" the court will ultimately favor industry.

"There is clear tension between the purpose of the judicial review preclusion provisions of CERCLA, seeking to avoid interference with CERCLA remediation, and the savings clause provisions, that preserve state common law causes of action," he said.

The U.S. Chamber of Commerce, which filed an amicus brief last year, warned that a win for the landowners would upset the "relative certainty" companies have about cleanup liability for Superfund sites.

University of Maryland law professor Robert Percival said the Supreme Court's appetite for the case reflects its growing interest in federal-versus-state preemption issues in environmental law. For example, the court in October heard a case involving whether federal law trumps Virginia's longtime moratorium on uranium mining. A ruling in that case is expected soon.

"The Court may view Atlantic Richfield as providing it with an opportunity to follow up on whatever approach to preemption it adopts in the Virginia case," Percival said.

He noted that the court's approach to federal-state tension is especially significant in light of major upcoming legal battles, including the anticipated fight over the Trump administration's plan to curtail California's ability to set stricter auto emissions standards.

The Superfund case is the second major environmental issue on the Supreme Court's docket for the next term, which begins in October. The other case, *County of Maui v. Hawai'i Wildlife Fund*, involves the scope of the Clean Water Act.

The high court today declined to get involved in a separate Superfund case, *Teck Metals v. Confederated Tribes of the Colville Reservation*, which dealt with pollution in Canada that harmed the Upper Columbia River in Washington state.

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The Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/daily-on-energy-democrats-prepare-to-fight-trump-epas-effort-to-force-pipelines-on-states>

Daily on Energy: Democrats prepare to fight Trump EPA's effort to force pipelines on states

By John Siciliano and Josh Siegel

DEMOCRATS PREPARE TO FIGHT TRUMP EPA'S EFFORT TO FORCE PIPELINES ON STATES: Democrats led by Tom Carper are clamoring for a fight over President Trump's most recent executive order hobbling states' powers to block natural gas pipelines and other energy infrastructure using Clean Water Act permits.

The Environmental Protection Agency stoked Carper's rage on Friday by issuing guidance to federal agencies on implementing Trump's April order to rein in states' authority to block permit approvals.

Chief Political Correspondent Byron York on the expanded Washington Examiner magazine

Carper, the top Democrat from Delaware on the Environmental and Public Works Committee, said in a statement Friday evening that he is convinced EPA and the president are violating "congressional intent."

"The president's executive order and EPA's new guidance are indefensible and defy the clear intention of Congress," Carper stated.

Carper's office would not say if the senator is suggesting a court battle over the Trump order, or if the senator might initiate legal action, or join one brewing among the states.

An aide explained that Carper will most likely raise his concerns first through the public comment process that EPA will be initiating, while simultaneously scrutinizing the genesis of the order.

Carper explained that being a former governor himself, he "shudder[s]" at the prospect of states having "no real authority" to challenge permits on federal energy projects. He added that states went through that "nightmare" in the 1960s. Congress established section 401 state powers under the Clean Water Act to give states a say over how their water resources were being used and potentially threatened.

Earlier last week, before EPA issued the guidance, Carper led a group of Democrats in sending a letter to EPA administrator Andrew Wheeler, asking him for all documents related to how the agency will seek to fulfill the Trump order

The senators said that in the decades since the passage of laws bolstering states' authority to issue water permits, Congress has not seen fit to oppose or revise that authority.

They point out that a Supreme Court decision 25 years ago affirmed states' authority under section 401, and that the Congress finds the authority wholly adequate, and not in need of revision.

Sens. Tammy Duckworth, D-Illinois, and Cory Booker, D-N.J., joined Carper on the letter.

GOP ready to rein in state abuses: Nevertheless, Republicans see EPA's guidance as blocking states from abusing their authority under the law.

Sen. Lisa Murkowski, R-Alaska, chairwoman of the Energy and Natural Resources Committee, said the EPA guidance balances states' authority over water resources while promoting responsible development of energy resources.

The guidance will also "reduce abuse" of Clean Water Act permits to block infrastructure needed to provide reliable and affordable energy, Murkowski added.

Murkowski's office explained that the guidance is a preliminary action, and that EPA will soon issue new regulations updating how section 401 is implemented, noting that the law governing the permit authority has not been revised since 1971

Trump's order directs EPA to issue the new rules 120 days after the guidance is published

The Republican chairman of Carper's committee, Sen. John Barrasso of Wyoming, said the EPA reforms are needed now more than ever.

"We need reform, and we need it fast," he said, accusing states like Washington, New York, and New Jersey of preventing the U.S. from exporting natural gas and other energy resources.

Oil and natural gas groups welcomed the EPA guidance on Friday, while environmental groups rebuked it as a step in the wrong direction for states' rights and climate change.

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E&E Daily

'Enforce the laws' — ex-chiefs come before Congress

<https://www.eenews.net/eedaily/stories/1060512177/search?keyword=EPA>

Kevin Bogardus, E&E News reporter

Lawmakers this week will hear from EPA's past to determine a way forward.

Four former EPA administrators are expected to testify on the agency's mission and future before a House Energy and Commerce subcommittee tomorrow.

The ex-agency chiefs scheduled to appear before the Subcommittee on Oversight and Investigations: Gina McCarthy, who led EPA during President Obama's second term; Christine Todd Whitman, President George W. Bush's first EPA administrator; William Reilly, head of the agency under President George H.W. Bush; and Lee Thomas, President Reagan's last EPA chief.

All have been critical of EPA's direction under the Trump administration. Earlier this year, they signed on to a letter along with three other former administrators pushing Congress for more agency oversight.

In an interview with E&E News, Reilly said he was struck by the Trump EPA's penchant for pulling back environmental rules, such as redefining the Waters of the U.S. rule; reopening the justification for the Mercury and Air Toxics Standards; and replacing the Obama-era Clean Power Plan, designed to curb power plants' carbon emissions, with the Affordable Clean Energy rule

"EPA is citing economic arguments for what it is doing but is rarely ever taking action for reasons of environmental protection," Reilly said. "It would be reassuring if any of those moves were defended because the original rules were environmentally insufficient."

Others said they had concerns about how science is being treated at the Trump EPA. The agency's Science Advisory Board, whose membership itself has been reworked under a Trump administration ban on EPA grantees, voted last week to review the heavily criticized proposal to bar public health studies with confidential data from being used to craft EPA regulations.

Whitman said she is worried about "a seeming disregard and disrespect of science" that could force out EPA's institutional knowledge and hurt its recruitment.

"If science doesn't matter, it's going to be very hard to get the young brains that we want," she said. "They're just not being respected, so why would you want to be put in that position?"

Bill Ruckelshaus, who served as EPA's first administrator from 1970 to 1973 and returned to lead the agency from 1983 to 1985 under Reagan, was asked to testify at tomorrow's hearing but was unable to travel. He said the current administration doesn't believe in EPA.

"They don't believe in this definition of what the agency should do under the existing laws," Ruckelshaus said. "They have to be aggressive. The laws themselves are aggressive. If they are not willing to push hard, not much will happen."

Reilly said EPA is challenged by its lack of support in the Trump White House.

"The principal challenge has to do with the degree the White House considers that EPA has value, that it has constituted and administered since 1970," Reilly said. "The president has made clear that it does not. When he said he wanted to cut up EPA into little pieces, he made that clear."

EPA in 'denial' on climate

Former administrators are also worried by the Trump administration's moves on climate change.

President Trump has decided to withdraw the United States from the Paris Agreement. Top officials have pushed back on dire scientific assessments for rising carbon emissions. Regulations across the federal government to fight climate change have been rolled back.

Thomas said EPA should take "a leadership role on a global level when it comes to climate change."

"They have not taken the position I would have on climate change. They have been in a more denial position," he said.

Thomas said Congress could step in to help the agency by passing legislation that would build incentives to move away from fossil fuels.

"In my opinion, there needs to be congressional action, giving clear direction in how to move forward on climate change," said the former Reagan-era administrator.

"Congress needs to be accountable. Just don't keep dunking on EPA," Thomas said. "Parts of the issue have to do with gaps in existing law and ambiguity in existing law that Congress has come to grips with. Climate change is a great example."

Reilly shared with E&E News his written testimony for tomorrow's hearing. He argues lawmakers should bolster EPA, especially on climate change, and reject carbon tax proposals that seek to remove the agency's regulatory power.

"Don't go there. Maintain a vigorous and effective EPA and plan for a climate strategy that exploits its unique regulatory powers," Reilly advises in his testimony.

Ex-EPA chiefs also said lawmakers can support EPA by maintaining its funding. The Trump administration has proposed deep cuts in its budget plans each year for the agency, but even a Republican-controlled Congress ignored them to keep EPA's funding relatively the same.

"The protection for staffing and budget, which was achieved by a Republican Congress, and a rejection of the Trump administration's proposed budget cuts of a third are directionally correct. I will compliment that," Reilly said. "A Congress that was enthralled with Trump defied him on something that was important."

Appropriators in the House, now held by Democrats, have now backed a funding boost of nearly \$700 million in fiscal 2020 for EPA.

"The agency has enjoyed and needs bipartisan support. This is an agency that makes decisions to protect the environment and public health that require broad public support," Thomas said.

Ruckelshaus also pushed for more congressional oversight of EPA. "They can hold vigorous oversight hearings and see if the laws are enforced as originally intended," he said. "If you don't believe they should be enforced strictly and aggressively, then you shouldn't be running the agency."

Strained relations

Being one of the few people to have run EPA means one is part of a unique club.

There are 10 living former administrators. Some occasionally do joint appearances or author op-eds together as well as stay in touch with those managing the agency today.

But that relationship between EPA and its former chiefs has grown tense during the Trump administration.

None of the former administrators interviewed for this story say they met with Scott Pruitt, Trump's first EPA administrator, who resigned last July after being overwhelmed by ethics allegations.

"He was not big in reaching out to those of us who are in favor of the mission of the agency," Whitman said

A few have met with Andrew Wheeler, the agency's current head, who replaced Pruitt and was confirmed at the end of the February.

Wheeler's official calendar obtained by E&E News under the Freedom of Information Act shows he met with McCarthy before her portrait unveiling last October. Wheeler also met in August last year with Reilly, whom he served under as a career employee at EPA in the early 1990s.

Reilly said he shared his worries with Wheeler in that meeting. "I expressed concerns about science and the international agenda," he said.

Ruckelshaus said he was contacted to have a meeting with Wheeler, too, but that has not come to fruition.

"Unlike Pruitt, he did reach out to me through a third party that he would like to meet with me and discuss the future of the agency," said Ruckelshaus, referring to Wheeler. "I said I would be happy to meet with him, but I never heard from him again."

EPA press officials didn't respond to questions from E&E News for this story, including whether Wheeler had sought a meeting with Ruckelshaus

EPA's first administrator was blunt when asked what he would have said to Wheeler.

"Enforce the laws the way they are written," Ruckelshaus said. "You can go on and be hired by the president to change these laws but not ignore them. That's what they're doing."

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E&E PM

Interior-EPA bill on House floor next week

<https://www.eenews.net/eenewspm/2019/06/10/stories/1060542009>

George Cahlink, E&E News reporter

The House will take up the annual funding bill for EPA, the Interior Department and other environmental agencies next week as part of its second minibuss package of spending bills

The House Rules Committee announced today that proposed amendments are due by Thursday morning for the package, which includes the Interior-EPA, Commerce-Justice-Science, Agriculture, Transportation-Housing and Urban Development, and Military Construction-Veterans Affairs bills.

The panel is expected to hold a hearing early next week to decide what provisions will get votes when the \$383 billion minibuss reaches the floor

The \$37.3 billion Interior-EPA portion would reject the deep cuts in environmental spending sought by the Trump administration by boosting spending by around 5% for fiscal 2020.

Democrats have already said they would seek a floor vote on an amendment to block any spending related to efforts to begin offshore oil and gas leasing.

House Republicans, for their part, will likely offer amendments to drop Democratic provisions to limit drilling in the Arctic National Wildlife Refuge as well as one tightening Endangered Species Act restrictions. Similar efforts failed in the Appropriations Committee.

The \$74 billion Commerce-Justice-Science bill would deny a Trump administration push to cut funding for NOAA and promote climate research at several science agencies, including NASA

The \$86 billion Transportation-Housing and Urban Development bill could showcase fights over rolling back Obama-era clean car standards as well as funding for California's high-speed rail project.

Another provision in the minibuss would give back pay to certain contractors affected by the partial government shutdown earlier this year.

House Democrats are moving spending bills in bundles this month with a goal of having all 12 spending bills passed before the July Fourth recess.

Rules this evening will meet to begin considering amendments for its first, nearly \$1 trillion minibuss, which contains the Energy-Water, Defense, Labor-Health and Human Services-Education, State-Foreign Operations, and Legislative Branch bills.

The panel will focus on Labor-HHS-Education and State-Foreign Operations tonight, while taking up the other three bills tomorrow.

Democrats believe that by marrying defense and domestic spending measures, they can find the votes within their caucus to pass them.

House Republicans are largely expected to oppose the bills until there is a broader deal with the Senate and the White House on spending levels

Republicans have offered multiple amendments to the State-Foreign Operations bill to remove Democratic language that would bar spending any federal money to pull the United States out of the Paris climate deal.

The House on Wednesday is expected to begin floor debate on the \$1 trillion measure, which is now expected to spill into early next week.

Meanwhile, the House Appropriations Committee tomorrow morning will advance its final two fiscal 2020 spending bills, Homeland Security and Financial Services. Those bills are likely to make up a third minibuss spending package that will move to the floor later this month.

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Water

Greenwire

State AGs: EPA policy provides 'road map' for skirting law

<https://www.eenews.net/greenwire/stories/1060540137/search?keyword=EPA>

Ellen M. Gilmer, E&E News reporter

Democratic state leaders are pushing back on the Trump administration's decision to adopt a Clean Water Act interpretation they consider overly narrow

Eleven attorneys general sent a letter last week urging EPA to reconsider its recent interpretive statement specifying that Clean Water Act permits are not required for pollution that moves through groundwater before reaching a federally regulated waterway.

"The EPA's plan to roll back Clean Water Act protections and allow polluters to threaten the health of Americans is unlawful," California Attorney General Xavier Becerra (D) said in a statement. "If you pollute a waterway, you should bear the costs of damage done to public health and the environment."

Becerra was joined by the top lawyers for Maryland, Colorado, Connecticut, Maine, Massachusetts, Michigan, Oregon, Rhode Island, Vermont and the District of Columbia.

EPA rolled out the new interpretation in April in response to a series of court decisions that took divergent views on the scope of the Clean Water Act's permitting program

The law specifies that permits are required for pollution discharged from a point source into a federally regulated waterway. In some instances — including at Maui County wastewater wells that are currently the subject of Supreme Court litigation — pollution first enters state-controlled groundwater and then enters a body of water under federal jurisdiction

EPA's April statement says pollution that first flows through groundwater is out of the agency's hands under the Clean Water Act, no matter where it ends up (Greenwire, April 16)

That's a departure from previous EPA interpretations, including the one set out in an agency amicus brief in earlier proceedings of the Maui case in 2016. A public comment period, which ended Friday, yielded hundreds of letters of support and criticism for the new approach.

Becerra and the other attorneys general argued the policy change is problematic in both substance and procedure

The Clean Water Act's permitting program does not include an exception "carving out discharges that travel through groundwater before reaching navigable waters," they wrote.

They contend the Trump administration's interpretation would allow polluters to evade the act by simply sending pollutants into nearby groundwater rather than going through the permit approval process for discharges into waterways

"It flouts the Clean Water Act's goals for EPA to give polluters a road map to skirt the Act's application in this fashion," the state officials said.

The states also argue that EPA should have used a full rulemaking process with public involvement for the policy change, rather than crafting a less formal interpretive statement.

EPA and supporters of the narrower Clean Water Act position maintain that other federal and state laws protect against unchecked pollution — an argument critics have rejected. The Democrat-led states say the other relevant laws — the Resource Conservation and Recovery Act, Safe Drinking Water Act and Superfund law — have various statutory limitations and aren't focused on protecting surface waters.

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Greenwire

Wash. AG sues EPA over decision to change state's standards

<https://www.eenews.net/greenwire/stories/1060539869/search?keyword=EPA>

By Associated Press

Washington state has filed a lawsuit challenging EPA's decision to revise Washington's water quality standards.

Attorney General Bob Ferguson (D) filed the suit Friday, saying that the revisions violate the Clean Water Act and that Trump's EPA cannot change water quality protections at the whim of industry interests.

The water quality standards apply specifically to Washington and are used to determine how clean Washington's waters must be to protect human health. The state in 2016 proposed updates that EPA approved during the Obama administration.

An industry group including paper companies and the Washington Farm Bureau objected and asked EPA to review the Washington rules.

EPA under President Trump accepted the industry argument and announced its revisions in May.

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The San Diego Union-Tribune

<https://www.sandiegouniontribune.com/news/environment/story/2019-06-09/trump-epa-releases-blueprint-for-stemming-tijuana-river-pollution-that-routinely-fouls-san-diego-beaches>

Trump EPA releases blueprint for stemming Tijuana River pollution that routinely fouls San Diego beaches

By Joshua Emerson Smith 06/10/2019

Shorelines in South Bay San Diego will never be fully immune from the sewage and chemical pollution that flows north from Mexico over the border through canyons and the Tijuana River.

However, beach closures triggered by contaminated stormwater and Tijuana's leaky sewer system can be dramatically reduced — from more than a hundred days a year to perhaps a just few dozen.

That was the message last week from President Trump's U.S. Environmental Protection Agency, which released the most comprehensive blueprint to date for addressing water pollution that fouls shorelines in Imperial Beach more than a third of the year on average.

"We're 100 percent committed to doing everything we can to resolve this issue," Mike Stoker, head of EPA's Pacific Southwest region, told a gathering of elected officials and top administrators in Coronado on Wednesday.

The EPA plan outlined more than \$200 million in prospective projects, including dramatically beefing up the capacity of Mexico's diversion system in the Tijuana River. The network of pumps and pipes is intended to intercept flows and send them to the Pacific Ocean before they cross into the San Diego region, but it's routinely overwhelmed by sewage spills and even light rain.

At the same time, the EPA document said the U.S. could build its own diversion system north of the border. The project would either send flows directly to the ocean or treat them at the South Bay International Wastewater Treatment Plant.

"We're 100 percent committed to doing everything we can to resolve this issue."

MIKE STOKER, U.S. EPA PACIFIC SOUTHWEST REGION 9 ADMINISTRATOR

Stoker, a former Santa Barbara County Supervisor who was appointed by Trump last year to the EPA, encouraged local leaders to identify desired projects and then pursue congressional funding with a coordinated effort.

"I really think on our watch, our mutual watches, we're going to solve this problem," he said, adding: "The ball is now in the court of the locals."

Still, federal authorities repeatedly stressed that little could be done to address polluted flows in the Tijuana River Valley following large storms. Like in most parts of South California, beaches will need to be closed for several days following such rain events.

"When these big storm events happen, there's nothing that can be done in the U.S. to prevent all of these flows from reaching the oceans and causing beach closures," said Doug Liden, U.S. EPA environmental engineer.

Securing the funding

The pledge of support by federal regulators comes as the state of California, as well as the cities of Imperial Beach, Chula Vista and San Diego, have filed Clean Water Act lawsuits against the Trump administration to force action on the issue.

Still, there was no hint of animosity at last week's meeting. San Diego Mayor Kevin Faulconer, Coronado Mayor Richard Bailey and Imperial Beach Mayor Serge Dedina all voiced enthusiastic support for EPA's efforts to map out the alternative projects.

"I'm ready to vote real soon and come up with what our preferred plan is," Faulconer said at the meeting. "In the big scheme, when we're talking national budgets on the U.S. side and Mexico side, I didn't see numbers that scared me away."

Dedina echoed that sentiment, urging an aggressive push for congressional funding. "My argument would be all of the above on both sides of the border," he said.

If local officials eventually secure the federal funding, the next step would be to get a similar commitment from the Mexican government. All U.S.-funded projects south of the border require an at least 50 percent match in funding from the Mexico.

"They don't have the kind of money the United States does. It is a poorer country. So we have to consider all those things," said Jayne Harkins, who took over in fall 2018 as commissioner of the U.S. section of the International Boundary and Water Commission. The agency oversees water treaties with Mexico and helps orchestrate binational funding agreements.

"We're trying to press these issues and figure out where there priorities are," she added. "They know it's a concern for the United States, and we're hoping to get them to focus on it."

Michael Camuñez, president and CEO of Monarch Global Strategies, said he was optimistic that Mexican authorities would see the value of these projects. He's been contracted by the Imperial Beach to help facilitate binational affairs.

"I think Mexico will have some resources," he said. "They're in a period of pretty severe austerity. But I think they know they have to bring resources to the table."

"What's in it for them is that their own people are suffering terribly from the contamination," he added.

Exasperated beachgoer

What's at stake is not only addressing the concerns of beachgoers exposed to pathogens such as E. coli, Vibrio and salmonella. Stormwater flowing through sprawling favelas not hooked up to Tijuana's sewer and garbage systems also pollute canyons where Border Patrol agents chase down illegal crossers. Those enforcing the country's immigration laws have frequently reported rashes and respiratory problems following contact with the foul-smelling, chemical-tainted water.

Since a rainstorm in 2017 cracked a collector pipe in the Tijuana River and flooded South Bay San Diego with untold millions of gallons of raw sewage, there has been a sustained outcry for action

This week many residents continued to voice their frustrations, despite what appears to be the most momentum on the issue in decades.

Imperial Beach residents, who have had sections of their coastline shuttered since November, barked at EPA and other federal officials during a public meeting Thursday held to update residents on the new blueprint.

"They're poisoning us," said Imperial Beach native Eric Syverson, 48, during the presentation. "They're poisoning us for my entire lifetime, man. You can't be civil when you're being poisoned."

Others in attendance expressed concern that the proposed projects would never become a reality.

"Most of the frustration in this room is because we're not actually doing anything about it yet," said John Munns, a 70-year-old Imperial Beach resident. "We're not getting funding for it. We're not building anything."

William Bay, 42, a Chula Vista resident who grew up in Imperial Beach, agreed: "Until we actually see something like a solid plan, I'm still skeptical," he said "They need a real comprehensive plan that they can say, 'Let's go get the money for it.'"

The Tijuana River diversion system

The pumps on the Tijuana River can divert up to 1,000 liters per second or about 23 million gallons a day. That water is largely treated wastewater dumped into the concrete river channel upstream from two wastewater treatment plants, Arturo Herrera and La Morita.

However, by the time that treated water reaches the border it's severely polluted. That's because Tijuana has tens of thousands of homes not hooked up to the sewer system and pipes routinely break, leaking sewage into the channel.

The Tijuana and Playas de Rosarito area in Baja California is one Mexico's largest urban centers, with an official population of about 1.64 million people. Officials estimated that in 2017 nearly 90 percent of the population was hooked up to the wastewater system, up from just 62 percent two decades ago.

Some experts dispute these numbers, arguing that they don't take into consideration the droves of people who have moved to the region to work in the factories, known as maquiladoras. Many of these workers build their own homes out of garage doors, corrugated metal and cinderblocks. Waste is often disposed of using hoses or plastic pipes that empty into ravines and creeks.

However, even the official numbers suggest that more than one in 10 people in the region live in homes not connect to the sewer system.

That sewage-tainted water bypasses the pumps on the Tijuana River for a number of reasons, from sediment and trash clogging the diversion pumps to power outages to mechanical failures.

Because the system operates very close to capacity, even light rain can cause flows to spill passed the diversion system.

Flows in the river spilled into the U.S. an average of 138 days a year between 2009 and 2016, according to the EPA.

"If the city grows, if there's more impervious surface the issue is going to get worse," said Salvador Lopez, chief environmental officer with the North American Development Bank, which help draft the EPA report.

However, that number could be reduced to about 90 days by spending about \$16 million to tighten up the system, according to the report. By comparison, if the U.S. and Mexico invested \$108 million they would increase the diversion capacity to 2,600 liters per second or 60 million gallons a day. In that case, flows across the border would drop to just 30 days a year.

Building a similar diversion system along the river in the United States could reduce the number of uncaptured flows to 58 days a year at a cost of \$48 million.

"There's the potential for U.S. agencies to have more control, to allocate resources and operate the facilities properly," Lopez said.

Also on the table is using the treated wastewater currently being dumped into the river channel for agricultural uses. Both public and private agencies are now trying to facilitate the sale of the cleaned water to wineries in the Valle de Guadalupe.

At the same time, the report suggested increasing the amount of money spent on aging sewer pipes and other infrastructure.

This year, EPA said it has about \$7 million to throw at water quality projects in Tijuana. Last year, the agency spent about \$3 million, with Mexico contributing \$4 million, to help repair several miles of primary sewer lines, dozens of manholes and hundreds of new residential and business connections.

Another \$4 million has been dedicated by the U.S. to helping rehabilitate a major sewer line that broke in December, leaking as much as 7 million gallons a day for over a week. Mexico has slated about \$7 million for the job.

It's still far from clear whether Congress will ultimately provide the potentially more than \$100 million dollars needed to make the EPA blueprint a reality. Those project would also include ongoing money for operations and maintenance.

Mexican authorities have in recent years said their sewer system needs more than \$372 million in repairs.

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EPA may spin off disputed changes in Clean Power Plan redo

<https://www.eenews.net/greenwire/stories/1060541063/search?keyword=EPA>

Sean Reilly, E&E News reporter

When EPA unveiled its proposed replacement for the Obama-era Clean Power Plan last summer, the draft blueprint came attached with a big add-on: a dramatic easing of air pollution permitting requirements for power plant upgrades

But as the agency barrels toward release of the final version of the Affordable Clean Energy rule by the end of this month, that change to the New Source Review program could be jettisoned for now, according to people in the business, environmental and regulatory communities.

"I wouldn't be surprised if they did them separately," Jeffrey Holmstead, who headed EPA's air office during President George W. Bush's administration and is now a partner at the law firm of Bracewell LLP, said in a Friday interview.

At the Natural Resources Defense Council, John Walke called that prospect "all but a certainty."

"We have not seen the final draft rule, but every single indication consistently we have heard is that the NSR package is being spun off," said Walke, the group's clean air director.

While EPA air chief Bill Wehrum has described that package as complementary to the agency's broader strategy in the ACE proposal, influential industry players such as the Utility Air Regulatory Group have voiced concerns about its workability.

In addition, manufacturers and other business sectors also covered by New Source Review permitting requirements want the same treatment as that offered to power producers (Greenwire, Aug. 30, 2018). Miles Keogh, executive director at the National Association of Clean Air Agencies, said in a Friday email that he's heard EPA will now bundle the New Source Review revamp into a broader rulemaking this fall.

At an April congressional hearing, EPA Administrator Andrew Wheeler acknowledged the possibility of dropping that plank from the final version of the ACE rule. If so, the agency would tackle it separately, Wheeler told members of a House Energy and Commerce subcommittee. "We will move forward with both pieces," he said (E&E News PM, April 9).

As of this morning, the final draft remains under review by the White House's Office of Information and Regulatory Affairs, according to a government tracking website. But the agency wants to release it soon. Wheeler is tentatively slated to meet with President Trump this week about the rule's rollout; the White House wants to be involved in its announcement, according to a senior EPA official.

Trump has made protection of the coal industry a signature issue. A White House spokesman had no on-the-record comment on the possibility of a meeting between Wheeler and the president this week.

As of this morning, EPA spokesman John Konkus had not replied to a Friday email seeking confirmation of the agency's plans for the ACE rule. The agency has also not responded to an interview request made weeks ago with Wehrum on the topic.

Unlike the 2015 Clean Power Plan, which took a systemic approach to reducing greenhouse gas emissions from coal-fired generating plants, the ACE proposal released last August focuses on improving the operating efficiency of individual facilities.

The New Source Review program requires plant operators to get pre-construction permits for upgrades or expansions expected to lead to more pollution.

Under the draft ACE rule, however, states could adopt a new yardstick for gauging whether such upgrades trigger the need for a New Source Review permit. Now, companies must forecast the potential effect on overall yearly air

emissions. The ACE proposal would allow states to substitute a more lenient approach tied to whether the project would lead to a higher hourly emissions rate

Earlier this year, Wehrum told a gathering of state utility regulators that the ACE strategy — with its emphasis on improved power plant efficiency — wouldn't work otherwise. "NSR would stand in the way of the implementation of those efficiency projects and likely make viable projects nonviable," Wehrum said at the time (E&E News PM, Feb. 12)

But Wehrum, who also worked in the EPA air office during the Bush administration, has a long-standing interest in revamping the New Source Review program. Environmental groups have objected that the planned change is a giveaway to coal firms

In releasing the ACE plan last August, EPA made clear that the New Source Review provisions were legally "severable," meaning it wouldn't kill the entire rule should a judge strike them down (Climatewire, Aug. 23, 2018).

Once the rule is made final, a barrage of legal challenges is virtually certain. Compared with what would have happened under the Clean Power Plan, power plant emissions of carbon dioxide, sulfur dioxide and nitrogen oxides are all expected be higher under the ACE rule, according to a recent analysis by Resources for the Future, a centrist think tank. But the increases would be more pronounced if the New Source Review overhaul were included in the final rule, the analysis found.

"This complicates EPA's stated justification for NSR reform, which is that it would enable coal plants to efficiently reduce their carbon emissions," Amelia Keyes, a research associate for Resources for the Future, wrote in a blog post.

The Utility Air Regulatory Group, which has traditionally represented electric companies dependent on coal-fired generation and recently announced it is disbanding, had different grounds for its misgivings about the proposed ACE rule. EPA's previous New Source Review program enforcement actions "represent a barrier" to power companies undertaking some efficiency projects, attorneys for the organization wrote in comments filed last October.

"Without steps from EPA to provide regulatory certainty that these measures will not trigger NSR, [power plant] owners and operators may still be hesitant to undertake these projects," they wrote.

With the final rule set for completion this month, at least eight industry, environmental and regulatory organizations have recently met with staff from EPA and the Office of Information and Regulatory Affairs, according to online records, with two more such meetings scheduled this week. Among the organizations weighing in are two from outside the power sector: the National Association of Manufacturers and the American Forest and Paper Association, the records indicate.

NAM press staffers did not reply to a Friday email seeking comment on the association's reason for offering feedback on the proposed rule. In a statement released today through a spokeswoman, Paul Noe, vice president for public policy at the forest and paper association, said that its meeting "was an opportunity to advocate for regulatory certainty related to our industry's use of bioenergy, which is critical to our manufacturers' future and their global competitiveness.

"Professional staff from OIRA and EPA were at the meeting and gave careful thought and a fair hearing to our concerns," Noe added.

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Brownfields

U.S. News

<https://www.usnews.com/news/best-states/maine/articles/2019-06-09/epa-awards-500m-for-cleanup-of-bates-mill-no-5>

EPA Awards \$500M for Cleanup of Bates Mill No. 5

By Associated Press 06/09/19

LEWISTON, MAINE (AP) — The federal government has awarded \$500,000 for the environmental cleanup of Bates Mill No. 5 in Lewiston

The money will be used to remove asbestos and other contaminants at the former textile mill building, bringing the property in the Maine city closer to redevelopment.

The Sun Journal reports that developer Tom Platz has slowly redeveloped the rest of the Bates Mill complex, but No. 5 has been a challenge.

In February 2018, the City Council extended an agreement by three years to give Platz exclusive rights to buy the 350,000-square-foot building for \$1, but also leaves the door open for another developer to take over the project in the third year.

The money was awarded through the Environmental Protection Agency's Brownfield grants. The city will provide a \$100,000 matching grant.

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Indiana Environmental Reporter

<https://www.indianaenvironmentalreporter.org/posts/epa-awards-indiana-communities-more-than-4-million-in-environmental-grants>

EPA Awards Indiana Communities More Than \$4 million in Environmental Grants

By Sophie Bird 06/10/19

The Environmental Protection Agency has chosen nine Indiana applicants to receive a total of \$4,055,625 in Brownfields Multipurpose, Assessment and Cleanup grants, which will be used to search for environmental contamination in Indiana communities

The recipients are Lawrenceburg with \$600,000, the Michiana Area Council of Governments with \$600,000, Indianapolis with \$600,000, the Northwestern Indiana Regional Planning Commission with \$600,000, Fort Wayne with \$455,625, Kokomo with \$300,000, Lawrence with \$300,000, Lebanon with \$300,000 and Sullivan with \$300,000.

The grants will be used to clean up brownfields – defunct industrial and commercial areas that often contain hazardous materials – so that they can be repurposed and redeveloped. The hope is that redeveloped sites, once decontaminated, can be transformed into areas that attract jobs and encourage economic development.

“Many communities are ready to move forward with redevelopment, they just lack the funding to get started,” said EPA Regional Administrator Cathy Stepp in a press release.

Of the 149 locations selected to receive Brownfields grants nationwide this year, 108 of them contain Opportunity Zones, low-income areas in need of long-term economic developmental investments.

“We are targeting these funds to areas that need them the most,” EPA administrator Andrew Wheeler said.

“Approximately 40 percent of the selected recipients are receiving Brownfields grants for the first time, which means we are reaching areas that may have previously been neglected.”

In previous years, Brownfields grants have been shown to increase tax revenue and property values. Studies conducted by the EPA found that the values of homes near redeveloped sites increased by up to 15%. Another study of 48 of these

revitalized areas found that, a year after cleanup, these locations generated an estimated \$29 million to \$97 million more in local tax revenue.

In the United States alone, an estimated 450,000 brownfields need cleanup. This year, 22 Indiana locations applied. Of the nine locations or organizations selected, only Indianapolis received a Multipurpose grant. Each of the others received a grant categorized as "Assessment."

In the Indianapolis area, the cities of Indianapolis, Kokomo, Lawrence and Lebanon will use grant money to further existing environmental projects, many of them initially funded by past Brownfields grants.

This year's grant marks the 13th for Indianapolis and will go toward the investigation and cleanup of the Black Mountain property, which contaminates the Englewood neighborhood the Indiana Environmental Reporter recently investigated energy inequality.

The city of Lawrenceburg plans to use the grants to evaluate the environmental state of the Lawrenceburg/Aurora Downtown Riverway District, which was once heavily populated by factories and petroleum storage facilities. This is the first year that Lawrenceburg has received a Brownfields grant.

In order to promote economic redevelopment, the city of Sullivan will use its Brownfields funds to investigate nearly 10 properties in the downtown area, including defunct gas stations and a dry cleaner. It also hopes to create new housing, offices and recreational areas.

The funds awarded to the Michiana Area Council of Governments will benefit towns throughout Elkhart, Marshall, Kosciusko and St. Joseph counties and will be used to develop housing, offices and neighborhoods in downtown Elkhart, Warsaw and Plymouth.

Fort Wayne has similar plans for its downtown area, and will also allocate grant money to the investigation of the St. Marys River. This will be Fort Wayne's second Brownfields grant.

The Northwest Indiana Regional Planning Commission grant will benefit Gary, Hammond and East Chicago. This is the 12th Brownfields grant for this area and will be used to search for potential environmental contamination.

In addition to Multipurpose, Assessment and Cleanup grants, the EPA Brownfields Program offers planning grants, environmental workforce grants and teaching, training and research grants.

Last year, the EPA announced \$2 million in funding to Indiana communities. These communities included Jeffersonville, Indianapolis, Richmond and the Michigan City Sanitary District.

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